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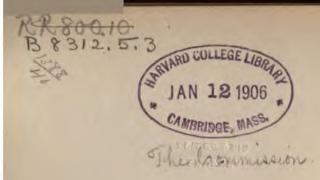
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MARGARET A. SCHAFFNER

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CONTENTS

REFERENCES
JUDICIAL DEFINITIONS
HISTORY
LAWS AND JUDICIAL DECISIONS
JUDICIAL CRITICISMS

REFERENCES

Beven, Thomas. The law of employers' liability and workmen's compensation. 3d ed. London, 1902.

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RAILWAY COEMPLOYMENT

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JUDICIAL DEFINITIONS

WHO ARE FELLOW-SERVANTS?

The question who are fellow-servants has been answered in a variety of judicial decisions which present widely conflicting opinions. No other subject known to our law has given occasion for such conflicting rulings. The decisions vary not only for different jurisdictions and for different historical periods but disagree to an extent which cannot be explained on the basis of general principles of law.

Definitions

A general uniformity of opinion is found in the following definitions:

New York. In 1862 the supreme court of New York decided, "Servants are 'fellow-servants' within the rule that the master is not liable for the injuries of the servant received through the negligence of a fellow-servant if they are in the employment of the same master, engaged in the same common enterprise, and are both employed to perform duties and services tending to accomplish the same general purpose, as maintaining and operating a railroad, operating a factory, working a mine, or erecting a building." Wright v. N. Y. C. R. Co., 1862, 25 N. Y. 562.

Vermont. With respect to railway servants the supreme court of Vermont held that "all who are engaged in accomplishing the ultimate purpose in view—that is, the running of the road—must be regarded as engaged in the same general business, within the meaning of the rule." Hard v. V. & C. R. Co., 1860, 32 Vt. 473.

Illinois. Recently the supreme court of Illinois decided that "the definition of fellow-servants is a question of law; whether a given case falls within that definition is a question of fact." C. & A. R. Co.

v. Swan, 1898, 176 Ill. 424.

Wisconsin. Still more recently the supreme court of Wisconsin, in applying the Illinois doctrine, held that "Where there is no dispute as to the respective duties of servants employed by the same master, the question whether they are fellow-servants is for the court." MacCarthy v. Whitcomb, 1901, 110 Wis. 113.

Conflicting opinion

From these definitions it would seem an easy matter to determine what constitutes common employ-

ment. The contrary is true.

Field. Justice Field, in C. M. & St. P. Ry. Co. v. Ross, 1884, 112 U. S. 377, says, "This question has caused much conflict of opinion between different courts and often much vacillation of opinion in the same court."

Pollock. Sir Frederick Pollock¹ points out that the term "common employment" is misleading because servants not "about the same kind of work" nor of the "same relative rank" are held to be coemployees.

¹ Law of Torts, 7th ed., p. 97.

Classification of Decisions

The decisions may be roughly classified along two general lines: those dealing with inequality of rank in service,—the vice principal rule,² and those relating to differences in work,—the departmental rule. However, neither the vice principal nor the departmental rule have uniform application. Pervading both of these rules runs the general doctrine of the assumption of risk.

General Definition

The only approximate definition possible seems to be that,—for any given jurisdiction or any stated time, coemployment is that which the legislature and the courts have defined it to be under the given circumstances.³

² A strict interpretation of the vice principal rule holds only those who stand as substitutes for the master in the performance of non-delegable duties as vice principals.

³ For a summary of conflicting decisions on railway coemployment see American Digest, Cent. ed., *Master and Servant*.

HISTORY

The doctrine of common employment is of recent origin. The great body of the common law did not embody this principle until near the middle of the 19th century.¹

COMMON LAW LIABILITY PRIOR TO 1837

It is a general principle of law that the person by whose fault an injury is caused is legally responsible. A further principle is that a person is liable for the acts of his agents acting within the scope of their authority.

In England prior to 1837, the common law principles of employers' liability comprised: 1. The master's responsibility for his own wrongful acts. 2. His liability for the acts of his servants acting within the scope of their employment,

After 1837, it gradually became the rule in England and in the United States to exempt the employer from liability for the injury of a servant resulting from the negligence of a fellow-servant.

^{&#}x27;Sec.—Pollock, Law of Torts, 7th ed., p. 96, Also Justice Field, U. S. Supreme Court, 112 U. S. 386,

DEVELOPMENT OF THE DOCTRINE

Early cases

1837. The basis of the rule of common employment is found in an English case, Priestley v. Fowler, 3 M. & W. 1.

The doctrine of railway coemployment was first distinctly announced in America.

1841. The first case in this country, Murray v. S. C. Raitroad Co., I McMulan 385, was decided by the supreme court of South Carolina which affirmed the fellow-servant rule.

1842. The supreme court of Massachusetts affirmed the doctrine in Farwell v. Boston and Worcester Railroad Corporation, 4 Met. 49. This case became the basis for future decisions in the United States and Sir Frederick Pollock¹ points out that it has had weight in influencing English decisions on the question.

1850. The first English case directly deciding the question of railway coemployment was Hutchinson v. York, Newcastle, and Berwick Ry. Co., 5 Exch. R. 343. In this case the Court of Exchequer held that recovery could not be had for a servant of the company, who was on duty on one of its trains and was injured by a collision with another train of the same company, because he was a fellow-servant with those who caused the injury.

Acceptance of the rule

England. United States. From 1837 on a long line of judicial decisions established the coemployment rule in England and the United States.

Law of Torts, 7th ed., p. 96.

The Continent. On the Continent the doctrine did not become a permanent part of the law. Tendencies toward the development of the rule were checked by statutes declaratory of employers' liability, and later by the systems of industrial insurance more recently established

STATUTORY MODIFICA

THE DOCTRINE

Statutes Prior to the Indu

entire German Empire.

urance Systems Germany,1 Before 1 nciples of the Roman law held in North and the employer was liable for the wrong his servants only if he was proven negligem in heir selection. In 1838 Prussia enacted a railway law which made railway companies liable for injuries to passengers and others unless they could prove negligence on the part of the injured person or some occurrence beyond their control. In 1871 a similar law was enacted for the

France. In 1841 it was decided that Art. 1384 of the French Civil Code made the employer liable to servants for injuries due to the negligence of fellowservants.

Italy. Belgium, Holland. These countries know nothing of a doctrine of common employment.

Norway. In 1854 Norway made railroad companies responsible for the acts of their officials.

Switzerland, Liability for compensation for death or bodily injury to servants was imposed on railways in 1875.

Sweden. In 1886 Sweden made railway companies

¹Compare, Clay, Abstract of the law of employers' liabilin Journal of the Society of comparative legislation, 1897.

liable to persons killed or injured in their service excepting in case of accidents due to the disobedience or gross negligence of the person injured.

England. In 1880, was passed the Employers' liability act. Lord Watson in Smith v. Baker, 1891, A. C. 325, said "The main, although not the sole object of the act of 1880, was to place masters who do not, upon the same footing of responsibility with those who do personally superintend their works and workmen, by making them answerable for the negligence of those persons to whom they intrust the duty of superintendence as if it were their own. In effecting that object the legislature has found it expedient in many instances to enact what were acknowledged principles of the common law."

British colonies. In Quebec the doctrine of common employment is unknown. The Canadian provinces and the Australian colonies have passed laws similar to the English act of 1880.

United States. Contemporary statutes for the several states are given under the heading Laws and Judicial Decisions.

Typical Industrial Insurance Systems¹

Industrial insurance acts providing compensation for injuries due to industrial accidents except those caused by serious or wilful misconduct on the part of the worker are in force in the following countries:

Germany. The compulsory insurance law of 1884, as amended in 1900, provides free medical treatment and a pension of 66 2/3% of wage for either temporary or permanent incapacity and in case of fatal

¹See, Workmen's insurance in Germany and abroad, in Guide to the workmen's insurance of the German Empire, Berlin, 1904.

accidents gives a pension to the family up to 60% of the annual wage. The annual costs of the system are assessed on individual employers, according to wages and risks, by mutual associations of employers organized by industries, thus securing collective responsibility. The workmen contribute about 8% to the accident insurance fund. The whole system is administered by the state.

Austria. The law of 1887 and 1894 differs especially from the German in having territorial associations of employers and employees: the employers pay 90%, the workmen 10% of the costs of accident insurance.

Norway. Compulsory insurance was established in 1894. Employers pay premiums according to wages and risk. The state pays all expenses of central administrative office and one-half of expenses of local branches; also meets deficits.

England. The act of 1897 applies to accidents in the more dangerous occupations. Insurance is voluntary, and the costs are paid by the individual employer. Benefits are paid up to 50% of the wages in case of total disability and in case of death survivors receive three times the amount of the annual wage. Payment is guaranteed by a prior claim upon amounts due the employer from accident insurance companies.

Denmark. Established voluntary insurance in 1898. The costs are paid by individual employers, and compensation may be guaranteed either through state or private companies.

France. The French system of 1898 is voluntary except for seamen. The costs are paid by employers and payment is guaranteed either through state or private insurance companies.

Italy. The law of 1808 is compulsory. Otherwise it is similar to the French plan.

Switzerland. Compulsory accident insurance was established in 1869; 75% of premiums are paid by employers, 25% by employees. A state subsidy provides about one-fifth of the necessary funds.

LAWS AND JUDICIAL DECISIONS

The United States is the only country in which the doctrine of common employment continues to have great practical significance.

The relation of master and servant has passed from status to contract. The contract relation has been regulated first by common law, second by statutory provisions. The doctrine of common employment has been subject to these two forms of modification and the following pages give the salient points of laws and judicial decisions in the United States.

The fact that many states have deemed it necessary to cnact general statutes giving right of action for injuries causing death, without providing for injuries not proving fatal, is explained by reason of the common law right which provided damages in case of injuries, from time immemorial while an action for damages on account of the homicide of a human being could not be maintained prior to Lord Campbell's Act in 1846. (9 and 10, Vict. c. 93.)

United States'

The decisions of the federal courts on the doctrine of common employment have not been uniformly consistent.

Compare: C. M. & St. P. R. Co. v. Ross, 1884, 112 U. S. 377; and N. E. R. Co. v. Conroy, 1899, 175 U. S. 323.

¹With the exception of citations taken from advance sheets, all cases cited are given from the reports of the court deciding the question.

In 1892 in B. & O. R. Co. v. Baugh, 149 U. S. 368, the supreme court declared that the question as to who are fellow-servants was not a question of local law but rather one of general law, and that in the absence of statutory regulations by the state the federal courts were not required to follow the decisions of the state courts.

In deciding questions arising under the employers' liability acts of the several states, such statutory provisions have generally been accepted as establishing the rule for the federal courts sitting within the state. However, diversity of interpretation has resulted in frequent disagreement between state and federal decisions under the same law.

Alabama. Civ. Code, 1897, c. 43, sec. 1749. Makes employers liable for injury caused by the negligence of any superintendent; or by one in authority; or in obedience to rules or instructions; or by the negligence of any person in charge or control of any railroad signal, engine, switch, car, or train, upon a railway, or of any part of the track.

Liability can not be avoided by contract. A. G. S. R. Co. v. Carroll, 1892, 97 Ala. 126.

Alaska.

In Gibson v. C. P. Nav. Co., 1902, 1 Alaska 407, the vice principal rule was applied.

Arizona. Civ. Code, 1901, sec. 2767. Corporations made liable for injury by fellow servants: previous notice of negligence to be given.

Arkansas. Dig. 1894, c. 130. Railroad companies made liable for acts of vice principals.

Authority must be actually entrusted to vice principal. Hunter v. K. C. & M. Ry. & B. Co., 1898, 29 C. C. A. (U. S.) 206.

California. Civ. Code, 1885, sec. 1970, as amended

by Acts, 1903, c. 220. Relates to non delegable duties of employer.

In McKune v. C. S. R. Co., 1885, 66 Cal. 302. A train dispatcher was held not a coemployee with a track laborer.

Colorado. Acts, 1901, c. 67. Employers made liable for injuries due to acts of fellow-servants.

Connecticut. Gen. St., 1902, sec. 4702. Default of the vice principal shall be the default of the master.

Delaware. Rev. Code, 1852, ed. 1893, c. 105. A general statute giving right of action for injuries.

A fireman of one train and the brakeman of another are fellow-servants. Wheatley v. P. W. & B. R. Co., 1894, 1 Marv. (Del.) 305.

Florida. Rev. St., 1891, c. 4071, sec. 3. Railroad companies made liable for negligence of fellow-servants. Contracting out, illegal.

Georgia. Civ. Code, 1895, sec. 2323. Liability of railroad companies for injuries to employees.

If an employer is without fault the railroad is Rable for the negligence of a coemployee, whether the injury is connected with the running of trains or not. Ga. R. v. Ivey, 1884, 73 Ga. 499.

Idaho. Codes, 1901, Civ. Pro. c. 126. A general statute giving right of action for injuries causing death.

A carpenter employed by a railroad is not a fellow servant of a train dispatcher. Palmer v. U. & N. R. Co., 1887, 2 Id. 290.

Illinois. Ann. St., 1806, c. 70. A general statute giving right of action for injuries causing death,

The duty of a master to warn a servant of danger cannot be delegated to a fellow-servant so as to absolve the master from liability for injury resulting from failure to communicate the warning. (Judgment, 1903, 109 Ill. App. 494, reversed.) Rogers v. C. C. & St. L. Ry. Co., 1904, 211 Ill. 126.

Indiana. Ann. St., 1901, sec. 7083. Railroad companies are made liable to employees for injury caused

by the negligence of any person to whose order or direction the injured employee was bound to conform; or by obedience to rules; or by the negligence of any person in charge of any signal, telegraph office, switch yard, shop, roundhouse, locomotive engine or train upon a railway; or where such injury was caused by the negligence of any coemployee, engaged in the same common service in any of the several departments, at the time, in that behalf, having authority to direct. Contracting out, illegal.

No constitutional objection to this act. State v. Darlington. 1899, 153 Ind. 1.

lowa. Code, 1897, sec. 2071. Gives railway employees a right of action for injuries arising from the negligence of coemployees.

This statute is not unconstitutional, being applicable to all persons or corporations engaged in a peculiar business.

McAunich v. M. & M. R. Co., 1866, 20 Ia. 338.

To hold that the injury must have been caused by the actual movement of the cars, engines, or machinery, to come within the protection of the statute would be giving too narrow a construction to the words 'in any manner connected with the use and operation of any railway." Akeson v. C. B. & Q. Ry. Co., 1898, 106 Ia. 54.

Kansas. Laws, 1905, c. 341. Makes railroads liable for all injuries to employees in consequence of any negligence of any of their servants. This statute gives to employees of railroads the same right to recover for injuries that a non-employee would have under the common law.

Kentucky. St., 1894, c. 1. A general statute, giving right of action for injuries causing death.

Louisiana. Rev. Civ. Code, ed. 1887, art. 2320. A general provision making employers responsible for damage due to their servants.

Maine. Rev. St., 1903, c. 89. A general statute, right of action for injuries causing death.

Maryland. Code, 1903, art. 67. A general statute giving right of action for injuries causing death.

Art. 23. Provided for a cooperative insurance fund.

Declared unconstitutional, 1904, Court of Common Pleas of Baltimore.

Massachusetts. Rev. Laws, 1902, c. 106. Makes employers liable for injury to employees caused by negligence of superintendents; or by persons in charge or control of any signal, switch, locomotive engine, or train upon a railroad.

Michigan. Comp. Laws, 1897, sec. 6308. Makes railroad companies liable for injuries causing death.

A railroad company is not held to the same accountability toward an employee as toward a passenger. Batterson v. C. & G. T. Ry. Co., 1884, 53 Mich. 125.

But it is due employees to protect them from unnecessary and unusual dangers. Ragon v. T. A. A. & N. M. Ry. Co., 1892, 91 Mich. 379.

Minnesota. Gen. St., 1894, sec. 2701. Makes railroad corporations liable for damages to servants due to the negligence of other servants; does not apply to construction of new road.

Acts, 1895, c. 173. A common law enactment.

Acts, 1895, c. 324, sec. 1. In any action, where damages are awarded for injury by coemployee, the court, upon request of either party, shall direct the jury to name negligent fellow-servant.

The negligence of a fellow-servant constitutes no defense in an action by an employee to recover damages. N. P. R. Co. v. Behling, 1893, 12 C. C. A. (U. S.) 662.

The decision of the supreme court of Minnesota that the fellow-servant law of that state applies to a mining corporation which owns a short line of road to mine its ore is not so clearly beyond the limits of the police power of the state that it must be declared a violation of the constitution of the U. S. Kibbe v. S. Iron Min. Co., 1905, (U. S. C. C. A., Minn.) 136 F. 147.

Mississippi. Const., 1890, art. 7, sec. 193. Makes

railroad companies liable for injuries to employees caused by the negligence of superiors; or by fellow-servants engaged in another department of labor, or on another train of cars, or about a different piece of work. Contracts waiving benefits, void.

Missouri. Rev. St., 1899, sec. 2873. Railroad corporations made liable for damages to servants engaged in the work of operating railroads by reason of the negligence of other employees.

A railroad section hand is within the protection of this

A railroad section hand is within the protection of this act. Overton v. C. R. I. & P. Ry. Co., 1905, (Mo. App.) 85 S. W. 503.

Laws, 1905, sec. 2864. Damages for injuries resulting in death are set at not less than two nor more than ten thousand dollars.

Laws, 1905, sec. 2876a. "Railroads" defined to include street and other railways.

Montana. Acts, 1905, c. 1. Railroad companies are made liable for all damages to employees due to neglect, or mismanagement, or wilful wrong, of other employees in any manner connected with the use and operation of any railroad on or about which they shall be employed. Contracting out illegal. Right of action survives.

Nebraska. Comp. St., 1901, c. 21. Gives general right of action for injuries causing death.

Track repairer and fireman, not fellow-servants. U. P.

Ry. Co. v. Erickson, 1894, 41 Neb. 1.

Foreman of a section crew and an engineer, not fellowservants. O. & R. V. Ry. Co. v. Krayenbuhl, 1896, 48 Neb. 553.

Nevada. Comp. Laws, 1000, sec. 3083. A general statute, giving right of action for injuries causing death.

New Hampshire. Pub. St., 1801, c. 191. Gives right of action for injuries causing death.

A train dispatcher, not a fellow-servant of a brakeman Wallace v. B. & M. R., 1904, 72 N. H. 504.

New Jersey. Gen. St., 1895, p. 1188, sec. 10. A general statute, for injuries causing death.

A master cannot claim immunity upon the ground that he exercised due care in selecting mechanics but assumes the burthen of seeing that they actually exercise reasonable care and skill. Collyer v. Pa. R. Co., 1886, 49 N. J. L. 59.

New Mexico. Comp. Laws, 1897, sec. 3216. Railroad companies made liable for injuries to employees due to lack of care in selecting or in overworking servants.

New York. Laws, 1902, c. 600. Imposes liability on employers for injuries to employees caused by the negligence of superintendents or of any person acting as such with the authority or consent of the employer.

The fact that there was a general superintendent who did not take immediate charge of the details of the work, over such foreman, did not relieve the master from liability for the latter's acts. McBride v. N. Y. T. Co., 1905, 92 N. Y. S. 282.

All of the employees of a railway company engaged in operating either of two colliding trains were fellow-servants of a fireman on one of the trains. Rosney v. E. R. Co., 1905, (U. S. C. C. A.) 135 Fed. 311.

North Carolina. Acts, 1897, c. 56. Makes railroad companies liable for acts of fellow-servants. Contracts waiving benefit of law, void.

Held constitutional. Hancock v. N. & W. Ry. Co., 1899, 124 N. C. 222.

North Dakota. Acts, 1903. c. 131. Railroad companies made liable for negligence of coemployees. Contracting out, illegal.

Ohio. Ann. St., 3rd. ed., sec. 3365–22. Persons actually having the power to direct and control, to be held not fellow-servants but superiors; also persons having charge in any separate department.

An engineer on one train is in a separate department

from a brakeman on another train. Railroad Co. v. Margrat, 1894, 51 O. S. R. 130.

Oklahoma.

Decisions of the supreme court of U. S. treated as controlling upon the supreme court of Oklahoma. Cf. Report for 1904, 14 Okla, 422.

Oregon. Acts, 1903, p. 20, sec. I. Makes railroad companies liable for injuries to employees when caused by any superior; or by any person having the right to direct the services either of the servant injured or of the negligent coemployee; or by any coemployee in another train of cars; or by any one having charge of any switch, signal point, or locomotive; or by any one charged with dispatching trains, or transmitting orders.

Pennsylvania. Digest, 1895, p. 1604, sec. 6. Provides that workmen who are not employees but are lawfully engaged about the premises of a railroad company shall have only such right of action for injuries as if they were employees.

Under this act any one not a passenger, who enters the depot of a railroad company takes the risk upon himself. Gerard, Adm'r, v. Pa. R. Co., 1878, 12 Phil. R. 394.

Porto Rico. Rev. St., 1902. Employers made liable to employees for injuries due to the negligence of superintendents; or to any person in charge of any signal switch, locomotive engine, car, or train in motion.

Rhode Island. Gen. Laws, 1896, c. 233, sec. 14. A general statute giving right of action for injuries causing death.

South Carolina. Const. art. 9, sec. 15. Makes railroad companies liable for injuries to employees due to the negligence of a superior; or of a fellow-servant in another department.

Acts, 1903. No. 48. Benefit from railroad relief

departments not to bar an action for damages for injury caused by the negligence of the company or of its servants.

South Dakota. Civ. Code, 1903, sec. 1449 and 1450. An enactment of the common law.

Tennessee. Code, 1884, part 2, title 3. A general statute giving right of action for injuries causing death.

A conductor of a railway train acting in his official capacity is a vice principal. A. G. S. R. Co. v. Baldwin, 1904, 113 Tenn. 409.

Texas. Acts, 1897, c. 6. Railroad companies made liable for acts of fellow-servants causing injury to any employee while engaged in the work of operating cars, locomotives, or trains.

Hand cars are within the meaning of this section. Long v. C. R. I. & T. Ry. Co., 1900, 94 Tex. 53.

Includes a logging railroad operated by a corporation solly for the purpose of carrying its own lumber. Lodwick L. Co. v. Taylor, 1905, (Tex. Civ. App.) 87 S. W. 358.

Utah. Rev. St., 1898, t. 36. The vice principal rule and the departmental rule applied.

A railroad yardman, not a fellow-servant with a foreman. Armstrong v. O. S. L. & U. N. Ry. Co., 1893, 8 U. 420.

Vermont.

Conflicting decisions. See Sawyer v. R. & B. R. Co., 1855, 27 Vt. 370. Davis v. C. Vt. R. Co., 1882, 55 Vt. 84.

Virginia. Const., 1902, art. 12, sec. 162. Makes railroad companies liable to employees for negligence of servants as follows: employees engaged in the construction, repair, or maintenance of its track; or in any work in or upon a car or engine upon a track; or in the physical operation of a train, car, engine, or switch, or in any service requiring his presence upon the same; or in dispatching trains, or transmitting orders; or for the negligence of superintendents; or of coemployees in another department of labor.

Contracts waiving rights, void. Provisions not restrictive.

See also Acts, 1901-2, c. 322.

Washington. Acts, 1899, c. 35. Liability of rail-

roads for safety appliances.

The negligence of such servants was the negligence of the master in making dangerous the place furnished the plaintiff in which to work. Mullin v. N. P. Ry. Co., 1905, 80 P. 814.

West Virginia. Code, 1899, c. 103. Gives general right of action for injuries causing death.

Trainmen and yardmen are fellow-servants. Beurhing's Adm'r. v. C. & O. Ry. Co., 1892, 37 W. Va. 502.

Wisconsin. Rev. St., 1898, sec. 1816, as amended by Laws, 1903, c. 448. Abrogates the fellow-servant doctrine with respect to railway employees who sustain injuries due to a "risk or hazard peculiar to the operation of railroads." The clause "peculiar to the operation thereof" has been rigidly construed so that the operation of the law is limited to a narrow scope.

Wyoming. Rev. St., 1809, sec. 2522. Contracts of employees waiving right to damages for injuries due to the negligence of other employees are void.

JUDICIAL CRITICISMS

The question of common employment has given rise to a variety of judicial criticism, some severe in denunciation, some commendatory of the doctrine.

Upholding the Rule

Massachusetts. Chief Justice Shaw of the supreme court of Massachusetts in delivering the opinion in the first important case on the subject of railway coemployment, said "the general rule, resulting from considerations as well of justice as of policy, is, that he who engages in the employment of another for the performance of specific duties and services, for compensation, takes upon himself the natural and ordinary risks and perils incident to the performance of such services, and in legal presumption, the compensation is adjusted accordingly. And we are not aware of any principle which should except the perils arising from the carelessness and negligence of those who are in the same employment. These are perils which the servant is as likely to know, and against which he can as effectually guard, as the master. They are perils incident to the service, and which can be as distinctly foreseen and provided for in the rate of compensation as any others. To say that the master shall be responsible because the damage is caused by his agents, is assuming the very point which remains to be proved." Farwell v. Boston & Worces-

ter R. Corporation, 1842, 4 Met. 49.

South Carolina. In the case, Murray v. S. C. R. Co., 1841, I McMullan (S. C.) 385, the first case on railway coemployment to be tried in this country, the court said "No case like the present has been found nor is there any precedent suited to the plaintiff's case . . . It seems to me it is on the part of the several agents a joint undertaking where each one stipulates for the performance of his several part. They are not liable to the company for the conduct of each other, nor is the company liable to one for the misconduct of another and as a general rule I would say that where there was no fault in the owner he would be liable only for wages to his servants."

United States Supreme Court. In the case of the Baltimore & O. R. Co. v. Baugh, 1893, 149 U. S. 368. Justice Brewer of the supreme court of the United States, said "But passing beyond the matter of authorities the question is essentially one of general law. It does not depend upon any statute; it does no spring from any local usage or custom; there is in it no rule of property but it rests upon those considerations of right and justice which have been gathered into the great body of the rules and principles known as the common law. There is no question as to the power of the states to legislate and change the rules of common law in this respect as in others but in the absence of such legislation the question is one determinable only by the principles of that law."

Adverse Criticism

Scotch case. As an illustration of a contrary position taken in an early Scotch case may be cited Dick-

son v. Ranken, 1852, 14 Sc. Sess. Cas. 2d series 420. In referring to the contention of counsel that the doctrine ought to be adopted on account of its own inherent justice, the court said, "This last recommendation fails with me, because I think that the justice of the thing is exactly in the opposite direction. I have rarely come upon any principle that seems less reconcilable to legal reason. I can conceive some reasonings for exempting the employer from liability altogether, but not one for exempting him only when those who act for him injure one of themselves. It rather seems to me that these are the very persons who have the strongest claim upon him for reparation, because they incur danger on his account, and certainly are not understood, by our law, to come under any engagement to take these risks on themselves"

Ohio. In the case, Little Miami R. Co. v. Stevens, 1851, 20 Ohio 432, the court observed that the "employer would be more likely to be careless of the persons of those in his employ, since his own safety is not endangered by any accident, when he would understand that he was not pecuniarily liable for the careless conduct of his agents."

United States Supreme Court. In holding that a corporation should be held responsible for the acts of a servant exercising control and management, Justice Field said "He is in fact, and should be treated as, the personal representative of the corporation, for whose negligence it is responsible to subordinate servants. This view of his relation to the corporation seems to us a reasonable and just one, and it will insure more care in the selection of such agents, and thus give greater security to the servants engaged under him in an employment requiring the utmost

vigilance on their part, and prompt and unhesitating obedience to his orders." C. M. & St. P. Ry. Co. v. Ross, 1884, 112 U. S. 377.

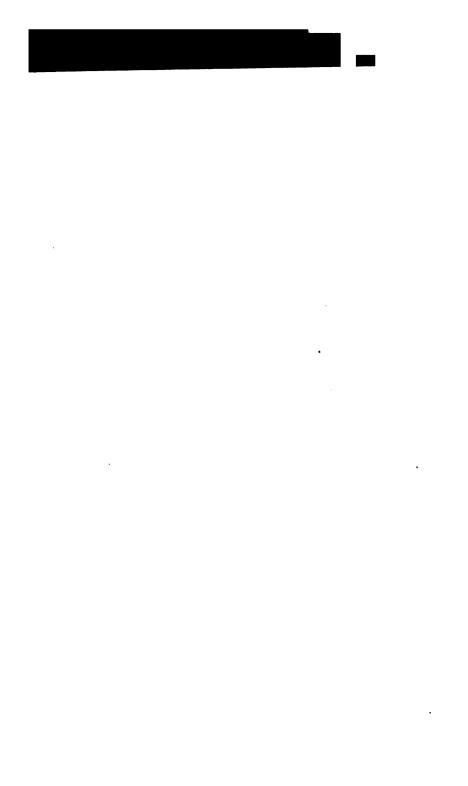
Connecticut. In the case of Ziegler v. Danbury & N. R. Co., 1885, 52 Conn. 543, the court stated, "The defense of common employment has little of reason or principle to support it and the tendency in nearly all jurisdictions is to limit rather than enlarge its range. It must be conceded that it cannot rest on reasons drawn from considerations of justice or public policy."

Missouri. The effect of changing economic conditions was dwelt upon by the court in the case, Parker v. Hannibal & J. R. Co., 1891, 100 Mo. 362, as follows: "In the progress of society, and the general substitution of ideal and invisible masters and emplovers for the actual and visible ones of former times, in the forms of corporations engaged in varied. detached, and wide-spread operations . . . has been seen and felt that the universal application of the rule (the rule in regard to fellow-service) often resulted in hardship and injustice. Accordingly, the tendency of the more modern authorities appears to be in the direction of such a modification and limitation of the rule as shall eventually devolve upon the employer, under these circumstances, a due and just share of the responsibility for the lives and limbs of the persons in its employ."

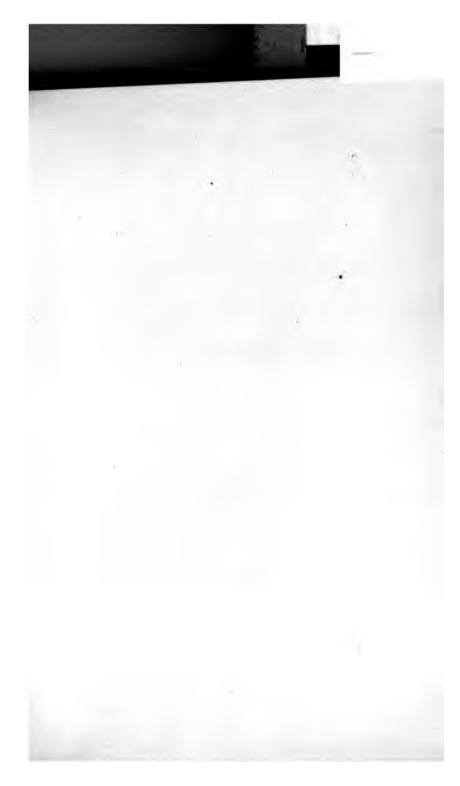
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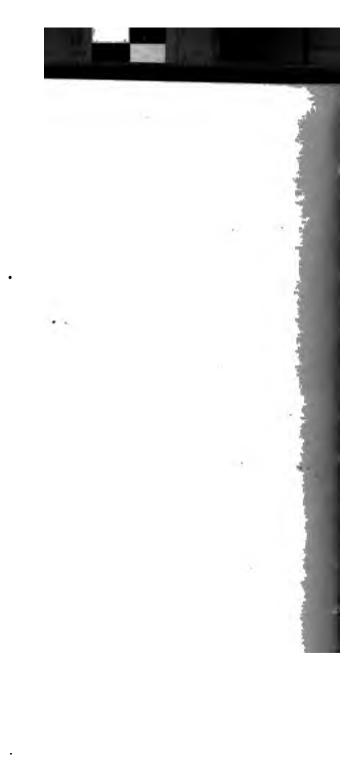
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LOBBYING

MARGARET A SCHAFFNER

MADISON WISCONSTN JAKEARY 1904

INTRODUCTION

The great aguation throughout the country on the subject of "Lobbying" has brought many demands from the people of this state and others for material collected in this department on this subject. This bulletin has been compiled to meet this demand. It is an impartial statement of existing legislation upon this subject.

CHARLES McCarruy, Legislative Reference Department

LOBBYING

MARGARET A. SCHAFFNER

COMPARATIVE LEGISLATION BULLETIN-No 2-JANUARY, 1906

Compiled with the co-operation of the Political Science Department of the University of Wisconsin

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CONTENTS.

REFERENCES	3-4
KINDS OF LOBBYING	5-8
Definitions	5
Legal versus illegal services	6
Methods of influencing legislation	7-8 -
Doctrine of our courts	8
The real issue	8
RULES, LAWS, AND JUDICIAL DECISIONS	9-24
Foreign countries	9-11
United States	11-24
REMEDIES	25–31
Restrictions on legislators	25-26
Limitations upon legislative procedure	26-28
Restraining devices	28-29
Positive remedies	29_31

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Shows need of counteracting the influence of private interests on legislation.

KINDS OF LOBBYING

A general uniformity of opinion prevails in English and American jurisdictions on the subject of lobbying.

Definitions

The following definitions are typical:

Wisconsin. "To lobby is for a person not belonging to the legislature to address or solicit members of the legislative body, in the lobby or elsewhere, away from the house, with a view to influencing their votes." C. V. & S. R. Co. v. C. St. P. M. & O. R. Co. 1889, 75 Wis. 224.

United States. "Lobby services are personal solicitations by persons supposed to have personal influence with members of Congress to procure the passage of a bill." Trist v. Child, 1874, 88 U. S. 441.

New York. "'Lobby services' are generally defined to mean the use of personal solicitation, the exercise of personal influence, and improper or corrupt methods, whereby legislative or official action is to be the product." Dunham v. H. P. Co. 1900, 56 N. Y. App. Div. 244.

Legal versus illegal services

United States. Numerous decisions of the United States supreme court point out the distinction between legal and illegal attempts to influence legislation.

In Trist v. Child, decided in 1874, Justice Swayne said: "Services which are intended to reach only the reason of those sought to be influenced rest on the same principles of ethics as professional services and are no more exceptionable. They include drafting the petition which sets forth the claim, attending to the taking of testimony, collecting facts, preparing arguments and submitting them orally or in writing to a committee, and other services of a like character; but such services are separated by a broad line of demarcation from personal solicitation, and though compensation can be recovered for them when they stand alone, yet when they are blended and confused with those which are forbidden, the whole is a unit and indivisible, and that which is bad destroys the good." 88 U. S. 441.

In another leading case the same court held "It is, however, the right of every citizen who is interested in any proposed legislation to employ a paid agent to collect evidence and facts to draft his bill and explain it to any committee or to any member thereof or of the legislature fairly and openly and ask to have it introduced; and contracts which do not provide for more and services which do not go farther, violate no principle of law or rule of public policy... But it is necessary to disclose agency to prevent the contract from being illegal." Marshall v. B. & O. R. Co. 1853, 57 U. S. 314: and "contracts providing for compensation contingent upon success are void as against public policy." Trist v. Child, 1874, 88 U. S. 441.

Methods of influencing legislation

The methods of lobbying are as various as are the interests represented. The courts distinguish between secret lobbying and open advocacy but it is not always easy to place the ban upon illegitimate methods without interfering with those which result in improved legislation. It has been urged that forbidding lobbyists to discuss measures with members of the legislature will merely deter the better class of lobbyists and champions of worthy measures, while unprincipled ones would not be prosecuted for violating the law. Among laws recently secured through organized in-) fluence brought to bear upon legislators are those establishing juvenile courts, compulsory education, and similar measures. Again in some states where corruption has been most flagrant the visible lobby has largely disappeared, in one well known case the governor of the state acting as go-between for private interests demanding special privileges and legislators whose seats were controlled by means of campaign contributions. Another state illustrates the capacity of a United States senator acting as boss for his state to so control matters that a wink or a nod from one of his sub-lieutenants would secure any legislative favors desired by those supplying campaign funds. Inadequate as these illustrations are they suffice to show that the lobbying question involves more than mere prohibition of personal solicitation of legislators. Then again the influence of some of the most powerful lobbies for private as opposed to public interests is exercised along legitimate lines at least so far as to scorn bribery or other corrupting influences. perior information and skill of many legislative agents and counsel enables them to convince by array of facts and figures so arranged as to seem to prove their case.

A half-truth is difficult to combat. It is this method of lobbying which is proving a real menace to public interests.

Doctrine of our courts

In holding a contract for secret lobbying and personal solicitation illegal the United States supreme court declared that it was "aware of no case in English or American jurisprudence where such an agreement was not held to be illegal and void." Trist v. Child, 1874, 88 U. S. 441.

The real issue

But the evils of lobbying are little affected by making lobby contracts illegal and void. Such contracts become subjects of litigation only where the system of lobbying is imperfectly organized. The real menace arises when principal and agent work harmoniously together against public interests for private ends.

9

RULES, LAWS, AND JUDICIAL DECISIONS

Foreign countries

England. The evils of lobbying have been largely eliminated by the system of private bill practice developed in Parliament. The Standing Orders of the House of Commons and the House of Lords prescribe strict regulations for parliamentary agents and counsel representing private or local interests and subject private bills to a quasi-judicial procedure as follows:

All bills granting any corporate privileges or affecting private rights as those conferring powers on railways, tramways, electric lighting, gas, and water companies, etc. must be introduced on petition and not on motion. Notice of such bills must be given nearly three months before the meeting of parliament and copies must be deposited in the Private Bill Office of the Commons. Memorials from opponents are also deposited and after preliminary investigation to insure conformity to the Standing Orders and to secure full notice by advertisement to all persons interested, the petition is presented to the Commons.

After the second reading the bill is referred to a committee: if a railway or canal bill, to a standing

committee for those matters, otherwise to a committee of four members and a referee.

The committee grant hearings and take evidence from promoters and opponents. Witnesses are examined under oath and every clause of the bill is given a quasi-judicial consideration.

After the return of the bill to the house its subsequent stages are similar to those of a public bill.

Every private bill must be in charge of some recognized parliamentary agent and no written or printed statement regarding any bill may be circulated in the house of Commons unless signed by some such agent who holds himself responsible for its accuracy.

Every agent must be registered, must give bond, and agree to abide by the Standing Orders of Parliament. He must also have a certificate from some member of parliament or of the bar and for any breach of requirements he may be suspended or prohibited from further practice.¹

British Colonics. With certain modifications, the English system of private bill practice in parliament is followed in Canada² and in the Australian commonwealth.³

The Continent. On the continent the question of lobbying has not as yet become so serious a matter as in England and in the United States. The reasons for this differ for the various countries. A partial explanation may be found in the fact that in some states

 $^{^{1}}$ See Standing Orders House of Commons relative to private business 1 -249, and Standing Orders House of Lords 69—148. London, 1900.

[&]quot;See Bourinot, Parliamentary procedure and practice in Canada.

³See Australia. The annotated constitution of the Australian commonwealth by Quick and Garran.

the government has a dominant influence in legislation and privileges are still distributed as favors; in others the legislative bodies and the government combined carefully investigate all applications for special privileges affecting private interests and subject franchises and grants to careful scrutiny and regulation; in still others quasi-public utilities are owned by the state and the rental of public property does not yield great private incomes.

United States

In Marshall v. B. & O. R. Co. decided in 1853, the supreme court held that all persons whose interests may in any way be affected by any public or private act of a legislature have an undoubted right to urge their claims and argument either in person or by counsel professing to act for them before legislative committees as well as in courts of justice, but a hired agent assuming to act in a different character is practicing deceit on the legislature... and services involving the use of secret means or the exercise of sinister or personal influences upon legislators are illegal. 57 U. S. 314.

Act of Congress, June 11, 1864, prohibits members of Congress from receiving compensation for services before a department.

Alabama. Const. 1875, art. 4, sec. 42. Corrupt solicitation of legislators punished by fine and imprisonment.

Arizona. Pen. Code, 1901, sec. 93. Obtaining or seeking to obtain money upon a representation of improperly influencing legislative action made a felony.

In such cases no person is excused from testifying on ground of self incrimination, but testimony not used against such person except for perjury.

Arkansas.1

California. Const. 1879, art. 4, sec. 35. Löbbying is declared a felony.

The term "lobbying" signifies to address or solicit members of a legislative body with the purpose of influencing their votes. Colusa Co. v. Welch, 1898, 122 Cal. 428.

Though the contract contemplates the use of personal solicitation, yet if no personal influence is brought to bear upon the members, and no dishonest, secret, or unfair means employed, to accomplish the object, it is not illegal. Foltz v. Cogswell, 1890, 86 Cal. 542.

The board of supervisors of a county have no authority to employ special counsel for the purpose of influencing members of the legislature with respect to pending legislation affecting the county. Colusa Co. v. Welch, 1898, 122 Cal. 428.

Rules of Legislature, 1905. Senate Rule Colorado. 31 and House Rule 27. Privileges of floor extended only to state, legislative, and judicial officers, congressmen, ex-members, reporters, and other persons specially invited. In the Senate the president or any senator may invite. In the House notice of desired privilege must be in writing and consent of house had: no suspension of this rule. While either house is in committee of the whole privileges of floor extend only to state officers: others admitted within the bar; in the senate, employees are not to carry the card or name of any person to any senator. Attempting to influence the vote of any member during a session shall subject the offender, if an officer, to removal from office, if a visitor to forfeiture of all privileges.

¹ See Arkansas under Prior notice of bills, p. 27.

Connecticut. Gen. St. 1902, sec. 1261. Attempt to improperly influence legislation punished with fine or imprisonment or both. Entertainment of legislators, improper influence.

Delaware.1

District of Columbia.

All contracts for services in procuring legislation are void from public policy. Weed v. Black, 1875, 2 McArth. 268.

Florida.2

Georgia. Const. 1877, art. 1, sec. 2, par. 5. Lobbying is declared to be a crime.

Code, 1895, sec. 3668. Lobby contracts void, as against public policy.

Idaho.8

Illinois. Rules of Legislature, 1905. Senate Rule 60 and House Rule 5. Admission to floor, unless by special permission, granted only to state, legislative, and judicial officers, ex-members, ex-state officers, and reporters. The House rule a so includes members of the constitutional convention and congressmen, while the Senate specifically excludes ex-members interested in pending legislation.

Indiana. Rules of Legislature, 1905. Senate Rule 38. Exclude all but members, officers, and ticket holders. House Rule 77. No person except state,

¹See Delaware under Subject and title of laws, p. 26.

²See Florida under Prior notice of bills, p. 27.

^{*}See Idaho under Subject and title of laws, p. 26.

legislative, and judicial officers admitted unless by consent of speaker.

Iowa. Rules of Legislature, 1906, Senate Rule 33. Admission to floor granted only to state, legis.ative, and judicial officers, ex-members and ex-state officers. Exceptions made upon special permission of the President or of a member. No person is permitted to come upon the floor of the Senate or into cloak rooms to solicit or influence senators in their official action. Officers or emp.oyees soliciting or endeavoring to influence members of the legislature are to be dismissed. House Rule 66. Also permits admission to the floor for the families of members and gives each member the right to admit a friend.

Kansas.

A contract for services as an attorney before a legislative body is valid, but for lobby services is void, as against public policy. McBratney v. Chandler, 1879, 22 Kan. 692.

Kentucky. St. 1899, sec. 1993. Any person who attempts by corrupt means to influence the vote of a legislator, to be guilty of a misdemeanor: fine or imprisonment or both.

Louisiane.

Any agreement which contemplates the use of private influence to secure legislation is void. Burney's Heirs v. Ludeling, 1894, 47 La. Ann. 73.

Maine. Rules of Legislature, 1905. Senate Rule 34 and House Rule 16. Prohibit members of legislature from acting as counsel before committees. House Rule 24. Persons not members, except state officers, etc. are admitted within hall only upon invitation by some member.

Maryland. Laws, 1900, c. 328. Requires legislative counsel or agents to register and to file written authorization from persons for whom they are to act, persons employing counse, to make sworn statement of expenses; legislative dockets to be kept by secretary of state. The governor may require sworn statement of expenses for any particular bill. The law does not apply to municipalities. Penalty for violating provisions of law, fine or fine and disbarment from acting as legis.ative counsel or agent, for three years.

Rules of Legislature, 1905. Senate Rule 55 and House Rule 5. Persons not members admitted within the bar of the two houses only upon invitation. Exception made for executive and judicial officers, exmembers, etc.

Massechusetts. Rev. Laws, 1902, c. 3, s.cs. 23-32. The main provisions are as follows: Any person, corporation, or association employing legislative agents or counse, are to enter the names of such counsel or agents upon dockets kept by the sergeant-at-arms. Employer and employee are both made responsible for entering names within one week after agreement but either party may enter fact of termination of employment. Two dockets are to be kept: the one for counsel, employed to appear at public hearings of committees or to advise in relation to legislation; the other for agents acting to influence legislation. The dockets are to contain the name and business address of the employer, the name, residence, and occupation of the person employed, the date and length of employment, and the special subjects of legislation to which the employment relates. Additional entries are to be made

as new subjects arise, so that the entries shall show all subjects of legislation in relation to which agents or counsel are employed. No legislative committee is to allow any person to appear before it as counsel who is not duly registered. Legislative counsel shall not act as agent unless also entered upon the agent's docket. Written authorization to act is to be filed, and compensation for services is not to be contingent upon suc-Within thirty days after final adjournment of the legislature the sergeant-at-arms is to deposit dockets with the secretary of the commonwealth and employers are to file sworn statements of expenses in such form as the secretary may prescribe; such statements to be open to public inspection. Penalty for violation of act on part of employer, not less than one hundred nor more than one thousand dollars; on part of agent, in addition to fine, disbarment from acting for three years. Act does not apply to city or town so icitors.

Michigan.

Keeping open house for the entertainment of legislators does not constitute bribery. Randall v. E. N. A. 1893, 97 Mich. 136.

Minnesota. Rev. Laws, 1905, c. 99, sec. 2. Corrupt solicitation of legislators made punishable by fine imprisonment or both.

Mississippi.1

¹ See Mississippi under Prohibition of log-rolling, p. 26.

Missouri.¹ Rules of Legislature, 1905. Senate Rule 53, and House Rule 86. Unless invited by the Senate or the House, no persons except state, legislative, and judicial officers, and congressmen are permitted upon the floor. House a.so admits ex-members of legislature.

Montana. Pen. Code, 1895, sec. 172. Any person obtaining or seeking to obtain anything of value on representation of influencing legislation improperly, guilty of felony. Not excused from testifying on ground of self incrimination. Testimony not used against such person except for perjury.

Nebraska. Rules of Legislature, 1905. Senate Rule 43. No person admitted to floor except state, legislative, and judicial officers, and congressman. House Rule 11. Privileges of floor extended to state officers, etc. and such other persons as the House may admit.

Nevada. Rules of Legislature, 1905. Senate Rule 49 and House Rule 57. Admission to floor, except on invitation by some member, granted only to legislators, state officers, and in the House, ladies. A majority in either house may authorize the presiding officer to clear the floor of all such persons.

New Hampshire. Const. 1792, part 2, art. 7. Members of legislature not to take fees or act as counsel in any cause before legislature.

At the last legislative session Governor Folk issued an order requiring lobbyists to register at the executive office upon coming to the capitol and also on leaving: to state the object of their visit to the governor and to the press; and to leave the city within a limit of thirty hours. Fear of inquiry into their methods led to compliance.

New Jersey. Legislature of 1905 adopted an antilobby resolution and appointed a special committee to investigate lobbying.

New Mexico.1

New York.

It is allowable to employ counsel to appear before a legislative committee or the legislature itself to advocate or oppose a measure in which the individual has an interest. Lyon v. Mitchell, 1867, 36 N. Y. 241.

But a contract for lobby services, for personal influence with members of the legislature is illegal and void. Mc-Kee v. Cheney, 1876, 52 How. Pr. (N. Y.) 144.

Rules of Legislature, 1906, Senate Rule 49 and House Rule 30. Admission to the floor granted only to legislators, and state officers, their clerks, deputies, etc. and reporters. The Senate also grants admission by card to ladies or to members of families of senators and of presiding officer; while the House grants further admission either upon the permission of the speaker or by vote of the House. The House excludes reporters interested in legislation, or receiving compensation from any corporation for influencing egislation.

North Carolina?

North Dakota. Rules of Legislature, 1905. Senate Rule 37 and House Rule 44. Admission within the bar permitted only for state, legislative, and judicial officers, congressmen, ex-members of congress or legislature, members of the constitutional convention

 $^{^{\}circ}$ See territories of the United States under Special legislation, p. 27.

²See North Carolina under Prior notice of bills, p. 27.

and federal officers of the state. Exceptions made in the Senate by vote and in the House on permission of speaker. Any person lobbying in the House, to forfeit privileges of floor.

Ohio.

Asking other members of the legislature to support bills, collecting and presenting facts and reasons to them, and making arguments to induce them to support the bills, constitute "official duty" and "action" within the statute making it a crime for a legislator to solicit from any person any valuable or beneficial thing to influence him with respect to his official duty or to influence his action in a matter pending before him. State v. Geyer, 1896, 3 Ohio N. P. 242.

Rules of Legislature, 1904, Joint Rule 23. Visitors admitted may include: ex-members, state, legislative, and judicial officers, congressmen, governors of other states, clergymen by invitation of presiding officer, and persons invited by any member of the general assembly. Reporters may be admitted within the bar.

Oklahoma.

A contract contingent upon legislative action but not stipulating for any act by either party other than a presentation of an ordinance to the city council containing the provisions desired, is not void as against public policy. Baumhoff v. Okla. City Elec. & Gas & P. Co. 1904. 14 Okla. 127.

Oregon. Cr. Code, 1902, sec. 1894. Lobbying with members of legis'ature, without disclosing interest, declared to be a crime.

The sole purpose and effect of this section was to make lobbying under the circumstances herein described criminal. It does not render contracts valid made to secure lobbying services if they were made under such circumstances that the lobbyist could not be punished criminally. Sweeney v. McLeod, 1887, 15 Ore. 330.

Pennsylvania. Const. 1873, sec. 78. Corrupt solicitation of legislators punished by fine and imprisonment.

sec. 79. Person charged with corrupt solicitation not excused from testifying on ground of self incrimination; such testimony not to be used against person except for perjury.

Rules of Legislature, 1905. Senate Rule 28. No person admitted to floor during sessions, unless invited by a member, except state and legislative officers, exmembers, and stenographers. House Rule 43. Persons admitted to floor include state officers, etc. and others specially introduced by a member by permission of the Speaker.

Rhode Island. Const. 1842, art. 4, sec. 4. Legislators shall not take fees or be of counsel in any case before either house, under penalty of forfeiting seat.

South Carolina 1

South Dakota. Ru'es of Legislature, 1905. Senate Rule 8, and House Rule 47. Admission within the bar permitted only to state, legislative, and judicial officers, ex-members, etc. and reporters. Exceptions made in the Senate on permission of the President and in the House by vote.

Tennessee. Acts, 1897, c. 117. Declares lobbying to be a felony.

Texas.2

¹ See South Carolina under Prior notice of bills, p. 27.

²See Texas under Prior notice of bills, p. 27.

Utah. Rev. St. 1898, sec. 4102. Any person hiring to influence legislation improperly, guilty of felony.

Vermon*. Const. 1793, c. 2, sec. 19. Prohibits representatives from acting as counsel or taking fee for advocating bill.

A contract for the employment of personal influence or solicitation to procure the passage of a public or private law is void. Powers v. Skinner, 1861, 34 Vt. 274.

Virginia. Code, 1904, sec. 3746. Paying or receiving compensation for securing legislation punished with imprisonment and fine.

This section intended to apply in the line of bribery and corruption and not for professional services, such as drafting petitions, setting forth client's claim, taking testimony, collecting facts, preparing arguments, oral or written, addresses to the legislature or its committee, with intention to reach its reason by argument. Yates v. Robertson, 1885, 80 Va. 475.

sec. 3748. Not to apply to any person having permission of legislative committee to appear before it.

Washington. Const. 1889, sec. 62. Corrupt solicitation of legislators punished by fine and imprisonment. Testimony may not be withheld on ground of self incrimination, but not used against person testifying except for perjury.

West Virginia. Acts, 1897, c. 14. Provides for the exclusion of lobbyists from the floor of either house of the legislature while in session.

Wisconsin. Rev. St. 1898, sec. 4482. Giving or receiving, or offering to give or receive services to influence legislation for compensation contingent upon success; or failing to disclose interest in bill when

22

seeking to influence legislative action made punishable by fine or imprisonment. (Laws of Wisconsin, 1858, c. 145, secs. 1, 2)

Laws, 1899, c. 243. The main provisions of the law are as follows:

- sec. I. Persons employed to act as counsel or agent to promote or oppose any legislation affecting the pecuniary interests of any individual, association, or corporation as distinct from those of the whole people of the state are to be registered within one week after employment. Employer and employee both responsible for entering name of counsel or agent upon legislative docket; either may enter fact of termination of employment.
- The secretary of state is to keep two dockets: the one for legislative counsel before committees, to contain the names of counsel or persons employed to appear at public hearings before committees of the legislature for the purpose of making arguments or examining witnesses and also the names of any regular legal counse; who act or advise in relation to legislation; the other for legislative agents employed in connection with any legislation included within the terms of sec. 1. The dockets are to be public records. open to the inspection of any citizen, and are to contain the names of employers and of counsel and agents, with addresses, occupation, date and length of employment, and the subjects of legislation to which the employment relates.
- sec. 3. It is the duty of persons employing counsel or agents to make additional entries whenever further subjects of legislation arise, specifically referring to

the petitions, orders, bi.ls, etc. so that the dockets sha.l show all the subjects of legislation in relation to which any counsel or agent is employed. All agents and counsel are to be registered before acting. Employment for compensation contingent upon success not permitted. Legislative counsel not also entered on the agents' docket are limited to appearing before committees and to giving legal advice.

- sec. 4. Counsel and agents are to file written authorization to act.
- sec. 5. Within thirty days after final adjournment of the legislature, every person, corporation, or association employing legislative agents or counsel shall file a sworn statement of expenses with the secretary of state.
- sec. 6. Penalty for violation by employers, not less than two hundred nor more than five thousand dollars; for violation by agents or counsel not less than one hundred nor more than one thousand dollars and disbarment from acting for three years.
- sec. 7. Municipalities and other public corporations, exempt.

Laws, 1905, c. 472. Makes it unlawful for any legislative counsel or agent to attempt to influence any legislator personally and directly otherwise than by appearing before the regular committees, or by newspaper publications, or by public addresses, or by written or printed statements, arguments, or briefs delivered to each member of the legislature: provided that twenty-five copies be first deposited with the secretary of state. State and federal officers and employees, having pecuniary interests in any measure are likewise

prohibited from attempting to influence legislators otherwise than is permitted to legislative counsel and agents. Admission to floor of either house prohibited for legislative counsel or agents except upon invitation of such house. Penalty for violation of act, fine and imprisonment. Counsel or agents of municipalities, exempt.

Rules of Legislature for 1907. Admission to floor of the two houses granted only to state, legislative, and judicial officers, regents of educational institutions, congressmen, ex-members of the legislature, not engaged in defeating or promoting any pending legislation, all editors of newspapers within the state, and reporters for the press, who confine themselves to their professional duties, and such other persons as the presiding officer upon the order of the house may invite.

Wyoming. Const. 1889, art. 3, sec. 45. Corrupt solicitation of legislators made punishable by fine and imprisonment.

REMEDIES

The leading provisions so far enacted may be roughly grouped under: 1. restrictions on legislators; 2. limitations upon legislative procedure; 3. restraining devices; 4. positive remedies.

Restrictions on legislators

Bribery. Under the common law bribery was always a crime. In certain jurisdictions it has been made a felony.

Compare laws of Ala. Ark. Col. Fla. La. Md. N. Y. Pa. W. Va.

Acceptance of railway passes and similar favors by legislators is unlawful in a number of states.

Compare laws of Fla. Ky. Mo. Wash. Wis.

Acting as counsel. Provisions prohibiting legislators from acting as counsel in any cause before the legislature were embodied in constitutions of American states before the end of the 18th century.

See N. H. Const. 1872, part 2, art. 7, and Vt. Const. 1793, c. 2, sec. 19.

Not to vote, if interested. Requiring legislators to abstain from voting upon bills in which they have a

private interest was early an acknowledged principle of parliamentary usage.

For constitutional provisions compare Pa. Const. 1875, sec. 80, and Tex. Const. 1875, art. 3, sec. 22.

Prohibition of log-rolling. Constitutional and statutory provisions against log-rolling have been adopted in a number of states. The following illustrations are typical:

Arizona. Pen. Code, 1901, sec. 92. Makes log-rolling punishable with imprisonment, forfeiture of office and disfranchisement.

Minnesota. Rev. Laws, 1905, ch. 99, sec. 3. Makes log-rolling punishable with imprisonment or fine or both.

Mississippi. Const. 1890, sec. 40. Requires legislators to take oath not to engage in log-rolling.

Utah. Rev. St. 1898, sec. 4096. Declares log-rolling a felony.

Also compare constitutional provisions of Col. Mont. N. D. and Wy. declaring log-rolling to be bribery.

Limitations upon legislative procedure

Subject and title of leaves. The provisions found in a majority of our states that each law shall embrace but one subject to be expressed in the title points to a time, not yet entirely passed, when special privileges and franchises were smuggled through legislatures under cover of innocent titles and when log-rolling was more openly practiced than at present.

Purpose of this provision, to prevent log-rolling. People v. Collins, 1854, 3 Mich. 343.

And to prevent surprise and fraud upon legislature. State ex rel. v. Ranson, 1880, 73 Mo. 78.

Design was to prevent the uniting of various objects in one bill for the purpose of combining various pecuniary interests in support of the whole. Conner v. Mayor, etc. 1851, 5 N. Y. 285.

Purpose is to prevent fraud and deception by concealment. Astor v. A. Ry. Co. 1889, 113 N. Y. 93.

Also compare constitutional provisions of Del. Const. 1897, art. 6, sec. 16; and Id. Const. 1889, art. 3.

Special legislation. Provisions prohibiting special legislation where general law is applicable have been adopted with few exceptions by our states.

The purpose was to exclude corruption and favoritism.

Nelson v. McArthur, 1878, 38 Mich. 204.

Compare constitutional provisions of the several states; and act of Congress, July 30, 1886, prohibiting the passage of local or special laws in territories of the U.S.

Appropriation bills. Several states require that appropriation bills be passed a stated number of days before the close of the session.

The power to veto separate items of such bills was conferred on the governors of many of our states to arrest log-rolling.

Compare constitutional provisions of Ala. Ill. La. Mo. Neb. N. Y. Pa. Tex. Wash. Wy.

Holding up appropriation bills still offers a strong means of offense for professional lobbvists.

Prior notice of bills. Requiring public notice prior. to the introduction of private bills is a further limitation on legislative procedure at least partially effective against lobbying.

Compare Constitutional provisions of Ala. Ark. Fla. La. N. C. Pa. S. C. Tex. Va. also the opinion of the supreme court of New Hampshire to House of Representatives, 1885, 63 N. H. 625, holding c. 2, sec. 1, N. H. Gen Laws, requiring a term of notice for private bills, unconstitutional.

For prohibitions against introducing new bills during the last days of the session see constitutional provisions of La. Mich. Wash. and the following decisions:

The people in a free country have a right to notice of proposed legislation and an opportunity to express their assent or dissent. Att'y Gen. v. Rice, 1887, 64 Mich. 385.

When the journal shows that the original bill was used for purposes of substitution and that the substitute was for

¹The Michigan provision, Const. 1850, art. 4, sec. 28, limiting the introduction of new bills to the first fifty days of session was repealed in 1904.

a different purpose, the act is void. Att'y Gen. v. P. R. Co. 1893, 97 Mich. 589.

Effect of vimitations. As to how far these limitations have served to regulate lobbying is a mooted question. As a general thing they have been effective to some degree, but certain authorities hold that the restrictions on special and local legislation have merely resulted in an undesirable modification of our general laws for special ends, and that requirements for published notice have been of little avail against secret manipulation of bills serving private ends.

Legislative power. The legislature has no power to bind a future legislature as to the mode in which it shall exercise its constitutional rights.

See De Bolt v. O. L. I. T. Co. 1853, 1 Ohio St. 563; Brightman v. Kirner, 1867, 22 Wis. 54; and Mix v. I. C. R. Co. 1886, 116 Ill. 502.

Since each legislature may determine its own rules of procedure, restrictions imposed by one may be repealed by the next. To preclude the possibility of easy repeal many of the restrictions enumerated have been embodied as constitutional provisions.

In the absence of constitutional restrictions, it remains with each legislative body to determine the limits of its own regulation.

Restraining devices

Registration. The provisions for registration in Massachusetts, Maryland and Wisconsin are somewhat similar. They include: registration of legislative counsel and agents, the keeping of dockets by the secretary of state, the requirement to register for each particu-

lar measure, the filing of written authorization to act and the statement of expenses. Municipalities and minor political units are exempt. Penalties for violation vary but include fine or disbarment from acting or both.

Compare Mass. Rev. Laws, 1902, c. 3, sec. 23-32; Md. Laws, 1900, c. 328; Wis. Laws, 1899, c. 243.

Prohibition of secret lobbying. Attempting to influence members of the legislature other than by appearance before committees is forbidden by c. 472, Laws of Wisconsin, 1905.

Exclusion from floor. Provisions excluding legislative agents and counsel from the privileges of the floor except under certain conditions have in some cases been enacted into law, but more generally they form part of the rules of legislatures.

Compare Wis. Laws, 1905, c. 472; Rules of Legislature of Col. Ill. Ind. Me. Md. and Neb. for 1905; N. Y. and Ohio, 1906; and proposed rules for Wis. 1907.

Positive remedies

Methods employed by some of our states to enable legislators to get at the facts of any question with dispatch include the following provisions:

Publicity of committee proceedings. The development of the committee system resulted in the withdrawal of many important phases of legislative action from direct public scrutiny. Among the measures employed to overcome this disadvantage are: publicity in the proceedings of committees with publication of all hearings granted to private parties, prior notice of such hearings to give all interested an opportunity to hear

or be heard either in person or by counsel, publication in permanent form of the evidence and findings.

Evidence as to facts. A quasi-judicial procedure thrown about private bill legislation in England has enabled parliament to secure accurate information on bills affecting private interests. Evidence is taken from promoters and opponents, witnesses are examined under oath, and careful consideration given every point brought before the private bill committees.

Compare Va. Const. 1902, sec. 51, providing for a joint legislative committee on special, private, and local legislation.

Agencies for securing information. The average legislator is a busy man. Intent upon doing his public duty he is often confronted with hundreds of bills during a single session. He must vote yes or no with little time for consideration. His greatest demand is for accurate impartial data giving all the facts in the case. The lobbyist gives him but one side. The public whose interests are at stake are too frequently indifferent.

Various agencies for getting at the facts are being developed by different legislatures. In some states the permanent state commissions, bureaus, and departments collect valuable data in convenient form for legislative reference: in others special investigating committees such as the Armstrong insurance committee of New York have secured valuable evidence as a basis for legislative action: in New York, Wisconsin, and California legislative reference departments have been established for the collection of data bearing on

the legislation of other states; for the compilation of laws on particular subjects; and for securing knowledge of the results of laws along lines upon which the legislature must pass judgment.



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CORRUPT PRACTICES AT ELECTIONS

Contributions and Expenditures

MARGARET A. SCHAFFNER

MADISON, WISCONSIN

The present agitation over campaign expenditures, and also campaign contributions, by insurance companies has made necessary this brief digest of legislation upon this subject:

CHABLES McCARTHY,
Librarian Fegislative Reference Department.

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MARGARET A. SCHAFFNER

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COMPARATIVE LEGISLATION BULLETIN-NO 3-FEBRUARY 1906
Compiled with the co-operation of the Political Science Department of the University of Wisconsin

WISCONSIN FREE LIBRARY COMMISSION LEGISLATIVE REFERENCE DEPARTMENT Madison Wis. 1906



CONTENTS

	Page
REFERENCES	3-4
LIMITATIONS ON CONTRIBUTIONS AND EXPENDIT-	
URES	5-9
WHAT ARE CORRUPT PRACTICES	5-6
Definitions	5-6
CORRUPT CONTRIBUTIONS AND EXPENDITURES	6-7
Expenditures	6-7
Contributions	7
PURPOSE OF LIMITATIONS	7-8
Common law regulation	7-8
Statutory provisions	8
LAWS AND JUDICIAL DECISIONS	9-29
Foreign countries	9-10
United States	10-29
SUMMARY	30-35
Publicity	30-31
Restrictions on contributions	31
Limitations on expenditures	31-32
Procedure for judicial inquiry	33
Penalties	33-35

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LIMITATIONS ON CONTRIBU-TIONS AND EXPENDITURES

WHAT ARE CORRUPT PRACTICES

Definitions

England. Under the British statute¹ corrupt practices at elections include: 1. bribery; 2. treating; 3. undue influence; 4. personation, and aiding, abetting, counselling, and procuring the commission of the offense of personation; 5. knowingly making a false declaration as to election expenses.

The English law also defines and provides penalties for illegal practices and illegal payments.

United States. The definitions for corrupt practices vary for the several states.

A typical definition is found in the Connecticut law of 1905, c. 280, sec. 11, which designates the following acts as corrupt practices: bribery; solicitation of candidates for campaign contributions, except by political committees; contributing campaign funds to others than to authorized treasurers or political agents; offering to procure office or appointment for another in order to influence his vote; making or receiving campaign contributions under assumed name.

¹Corrupt and illegal practices prevention acts, 1883 (46 and 47 Vict. c. 51) and 1895 (58 and 59 Vict. c. 40).

The California law of 1893, c. 16, and the Minnesota law of 1895, c. 277, also give extended definitions of corrupt practices.

CORRUPT CONTRIBUTIONS AND EXPENDITURES

Within recent years the legislatures of nearly a score of our states have placed limitations upon the irresponsible disposition of money in elections, and have sought to separate corrupt contributions and expenditures from those that are lawful.

Expenditures

In some of the states lawful expenditures are enumerated in the statutes and all others are expressly forbidden.

Minnesota. Thus the Minnesota law of 1805, c. 277, limits legal expenditures to the following: for the personal traveling expenses of the candidate. 2. for the rent of hall or rooms for the delivery of speeches relative to principles or candidates in any pending election, and for the renting of chairs and other furniture properly necessary to fit such halls, or rooms for use for such purposes; 3, for the payment of public speakers and musicians at public meetings and their necessary traveling expenses; 4, printing and distribution of lists of candidates or sample tickets. speeches or addresses by pamphlets, newspapers or circulars, relative to candidates, political issues or principles, cards, handbills, posters or announcements; 5. for challengers at the polls at elections; 6. for copying and classifying of poll lists; 7, for making canvasses of voters; 8, for postage, telegraph, telephone or other public messenger service; o. for clerk hire at the headquarters or office of such committee; 10. for conveying infirm or disabled voters to and from the polls.

Connecticut. The Connecticut law of 1905, c. 280, sec. 5, cnumerates the expenses which may be lawfully incurred by treasurers of committees and by political agents as follows: (a) for hiring public halls and music for conventions, public meetings, and public primaries, and for advertising the same; (b) for printing and circulating political newspapers, pamphlets, and books: (c) for printing and distributing ballots and pasters; (d) for renting rooms to be used by political committees; (e) for compensating clerks and other persons employed in committee rooms and at the polls; (f) for traveling expenses of political agents, committees, and public speakers: (g) for necessary postage. telegrams, telephones, printing, express, and conveyance charges. Expenses not specially authorized are not to be incurred.

Contributions

Provisions against contributions from certain specified sources present a further attempt to limit and regulate campaign funds. The prohibition of corporate contributions for political purposes is found in a number of states. Among other restrictions in force are those against the political assessment of public officers and employees, and the solicitation of candidates.

PURPOSE OF LIMITATIONS

Common law regulation

In a decision given in 1762 Lord Mansfield points out that "Bribery at elections for members of parliament must undoubtedly have always been a crime at common law and consequently punishable by indict-

CORRUPT PRACTICES AT ELECTIONS

ment or information." Rex. v. Pitt and Rex v. Mead, 3 Burr. 1335.

Statutory provisions

8

But while the common law was able to check direct and open bribery, statutory limitations have become necessary in order to make the law effective against the more subtle and insiduous methods of corruption.

LAWS AND JUDICIAL DECISIONS

Foreign countries

England. Corrupt and illegal practices prevention acts, 1883 (46 and 47 Vict. c. 51) and 1895 (58 and 59 Vict. c. 40) The English law provides penalties for false personation at the polls, repeating, intimidation, undue influence, and bribery of voters. It restricts the employment of paid agents, clerks, messengers, etc. by candidates or election committees within narrow limits. It prescribes a fixed scale of lawful expenditures by candidates and committees and requires a full account of such expenditures.

Canada. Rev. St. 1886, c. 8, 9, 10, and Dominion elections act, 1900 (63-64 Vict. c. 12) The main provisions of the British act are adapted to Canadian conditions.

Austria-Hungary. The Austrian Penal Code punishes corrupt practices at elections by imprisonment. The Hungarian Electoral Law of 1874 deals similarly with corrupt practices but is less effective.

Belgium. The Code Electoral makes corrupt practices punishable by fine or imprisonment or both, and deprives any person who has bribed or been bribed of his electoral rights for from five to ten years.

France. The French Penal Code makes corrupt election practices offenses at law and punishes every attempt at bribery by imprisonment of from three months to two years or by a fine ranging from fifty to five hundred francs or by both penalties.

Germany. The Criminal Code makes the purchase or the sale of an electoral vote punishable by imprisonment with loss of civil rights.

Italy. A permanent election commission of the Chamber of Deputies is provided for which in accordance with the rules of the Chambers and of the Penal Code makes inquiry into cases of suspected corrupt practices.

Sweden. The Fundamental Law; 1809, makes persons convicted of corrupt election practices ineligible to the Diet. The law further provides imprisonment at hard labor for offenders; corruption is practically unknown.

Norway. Corrupt practices at elections are made punishable by the Criminal Law, and candidates are disqualified upon conviction.

United States

Congress has power to control federal elections and to provide punishments for offences.¹

Act of Congress, Aug. 15, 1876, c. 287, sec. 6, forbids executive officers or employees of the United

Compare: ex parte Siebold, 1879, 100 U. S. 371; ex parte Clarke, 1879, 100 U. S. 399; ex parte Yarbrough, 1883, 110 U. S. 651; James v. Bowman, 1903, 190 U. S. 127.

⁴Bills are now (Feb. 1906) pending in Congress providing for publicity of campaign contributions and expenditures in federal elections; and also for prohibiting contributions by corporations chartered by the United States or engaged in interstate commerce.

States from requesting, giving to, or receiving from any other officer or employee of the government any money or other thing of value for political purposes.

Act is constitutional. Ex parte Curtis, 1882, 106 U. S. 371.

Alabama. Cr. Code, 1896, secs. 4191, 4694. Penalty for giving away liquor at elections, fine and imprisonment; for bribing voters, fine and imprisonment or hard labor.

Laws, 1899, p. 126. Punishes bribery at primary elections and makes candidate guilty of bribing ineligible for office.

Arizona. Laws, 1895. c. 20. Requires candidates and committees to file sworn, itemized statement of receipts and expenditures. Failure to file made a misdemeanor and on part of candidate also causes forfeiture of office. Punishes bribery by fine or imprisonment or both. Betting on elections made a misdemeanor.

Arkansas. Laws, 1891, c. 30, sec. 39. Bribery at elections made a felony.

Laws, 1897, c. 35. Prohibits giving away intoxicating liquors on primary election days.

California. Laws, 1893, c. 16. Requires candidates and committees to file sworn, itemized statements of receipts and expenditures, showing in detail all the money contributed or received with the name of each donor or subscriber or the source from which money was derived together with the names of persons to whom money was paid, the specific nature of each item, by whom the service was performed, and the purpose for which the money was expended. Refusal to file causes forfeiture of office. Only candidates or com-

CORRUPT PRACTICES AT ELECTIONS

12

mittees are permitted to expend money. Legitimate expenses are defined and the amount that can be expended is limited according to compensation attached to office. Bribery of electors is made punishable by imprisonment of not less than one nor more than seven years. Betting and treating are punishable as misdemeanors.

l.aws, 1805, c. 185. Requires independent candidates to conform to the same requirements as party nominees.

Laws, 1905. c. 479. Giving or receiving or offering to give or receive anything of value in order to influence any voter at any election made punishable by imprisonment of not less than one nor more than seven years.

Colorado. Gen. Laws, 1877, p. 381. Giving away liquor on election day punishable by fine or imprisonment or both.

Laws, 1891, c. 167. Requires candidates and committees to file statement of expenses incurred in aid of election. Statements are to be made under oath and are to show in detail all sums of money received, from whom received, and to whom and for what purpose money was paid. Failure to file statement made a misdemeanor and on part of candidate also causes forfeiture of office. Bribery of voters is made a felony and betting a misdemeanor.

Connecticut. Laws, 1877, c. 146, sec. 43. Betting on elections is punishable by fine.

Laws, 1895, c. 69. Paying naturalization fees for others is prohibited.

Laws, 1905, c. 280. Requires candidates, political agents, and treasurers of political committees to file

sworn, itemized statements of receipts, expenditures, and outstanding obligations. No person other than a treasurer or political agent is permitted to pay any election expenses except that candidates may pay their own expenses for postage, telegrams, telephones, stationery, printing, express, and traveling. Candidates who have not expended anything for their election are to certify to that fact. Failure to file statement by candidate is punishable by a fine of \$25 for every day he is in default unless excused by the court.

Expenditures which may be incurred by treasurers of committees or by political agents are enumerated and corrupt contributions and expenditures are defined.

Inquiry into corrupt practices may be instituted by any elector upon giving bonds for prosecution. Trials are to be conducted before two judges without a jury and a unanimous decision is necessary for conviction. Any candidate found guilty of corrupt practices is rendered ineligible for public office for four years but he is not held responsible for corrupt acts of his agents unless done with his sanction or connivance. Penalty for violation of the act is a fine not exceeding \$1,000 or imprisonment for not more than one year or both.

Delawere. Const. 1897, art. 5, sec. 7. Bribery of electors punishable by fine or imprisonment or both and by disfranchisement for ten years. Betting on elections, a misdemeanor. Testimony may not be withheld on ground of self incrimination except by person accused, but such testimony is not to be used against person testifying except for perjury.

Florida. Laws, 1898, c. 24. Prohibits the use of money by corporations to secure candidacy or election of any person or for any other political purpose.

Laws, 1903, c. 85. Unlawful to give liquor on election day.

Georgia. Pen. Code, 1895, sec. 629. Any person in any way concerned in buying or selling a vote at any election, guilty of a misdemeanor.

Laws, 1904, p. 97. Extends penalty to offenses at primary elections.

Idaho. Pen. Code, 1901, secs. 4576, 4578, 4581. Bribing electors or betting on elections, misdemeanors. Giving away liquor on election day, prohibited.

Rev. St. 1800, c. 46, secs. 83, 85. Any person soliciting or receiving money, liquor, or any other thing of value either to influence his vote or to procure the vote of another is guilty of bribery and upon conviction is to be sentenced to disfranchisement for not less than five nor more than fifteen years and to jail not less than three months nor more than one year. and to pay costs of prosecution and stand committed until paid. For second offense, to be forever disfranchised in the state, imprisoned in jail not less than a year and to stand committed until costs of prosecution are paid. Any person thus disfranchised, offering to vote shall on conviction be confined in penitentiary for not less than one nor more than ten years. Any person bribing or promising to bribe is not liable to punishment but shall be compelled to testify in prosecutions. Betting on election punishable by fine or imprisonment or both.

Act is constitutional. Christy v. People, 1903, 206 III.

Indiana. Rev. St. 1901, sec. 2194. Giving away liquor on election days punishable by fine and imprisonment.

Sec. 6339y. Candidates for county, township, city, or municipal office, voted for at any convention or primary are required to file itemized statements of expenses with the county or city clerk. Failure to file is punishable by fine, from \$50 to \$500, by disfranchisement, and ineligibility to public office for a definite period.

Laws, 1905, c. 158. Bribery at elections is punishable by fine not to exceed \$50 and by disfranchisement and disqualification for holding office for ten years.

Laws, 1905, c. 169. Penalty for betting upon elections, fine, or fine and imprisonment.

Iowa. Laws, 1895, c. 59. Bribery at elections punishable by fine or imprisonment or both.

Kansas.¹ Laws, 1893, c. 77. Prohibits the use of money or other valuable thing to influence voters or to reward services at polls, also prohibits treating.

Kentucky. St. 1899, secs. 1575, 1586-87. Bribery at elections excludes offender from office and suffrage. Also adds fine as punishment for receiving and fine or imprisonment or both for giving bribe. Furnishing liquor on election day, a misdemeanor.

Laws, 1900, c. 12. Unlawful for corporations to contribute to campaign funds.

Louisiana. Laws, 1890, c. 78. Bribery at elections punishable by fine and imprisonment at hard labor.

Maine. Rev. St. 1903, c. 6, secs. 95, 97. Bribery and corruption at elections made punishable by fine and imprisonment and ineligibility to any office for ten

¹Laws. 1903, c. 230. Repeals Gen. St. 1901, secs. 2734—42, requiring itemized statement of expenditures in political campaigns.

years. Betting on elections punishable by forfeiture of wager to the town,

Maryland. Code, 1904, art. 33, secs. 88, 112. Attempting to influence any voter by bribery or reward or offer or promise thereof, punishable by imprisonment. Betting upon elections punishable by fine.

Massachusetts. Rev. Laws, 1902, c. 11, as amended by Laws, 1903, c. 318, and 1904, c. 375, 380. Candidates and committees are required to file sworn statements of expenses. Payments by candidates are limited to contributions to political committees and for personal expenses which may include payments for traveling, writing, printing, the transmission of letters, circulars, and messages, and for similar purposes. statements filed by committees and by others handling funds are to set forth in detail all receipts, expenditures, disibursements and outstanding obligations: if the accounts of any committee do not exceed \$20 that fact shall be certified. Committees and others handling funds are prohibited from paying naturalization fees. Complaint of violation of the law may be made either by the proper official or by five registered voters. Proceedings for enforcement are to be brought by the attorney general or by the proper district attorney. Penalty for violation of law, a fine of not more than \$1,000, or imprisonment not exceeding a year. Penalty for bribing voters, imprisonment limited to one vear.

Michigan.¹ Comp. Laws, 1897, secs. 11437–69. Bribery at elections is punishable by fine or imprison-

¹Laws, 1901. c. 61. Repeals sec. 3654 of Comp. Laws, 1897 (Laws, 1891. c. 190) , requiring candidates and election committees to report expenditures under oath.

ment or both. Giving away liquor or betting on elections made misdemeanors. Legitimate expenses include the cost of printing and advertising, holding public meetings and procuring speakers, obtaining and distributing papers and tickets, and bringing voters to the polls.

Minnesota. St. 1894, sec. 120. Prohibits giving away liquor on election day.

Laws, 1895, c. 139. Sections of the general election law making bribery a misdemeanor are applied to village elections.

Laws, 1805, c. 277. Bribing or furnishing funds for bribery at elections is made a folony; punishable by fine of \$500 with costs and by imprisonment of not more than five years. Seeking or receiving a bribe is made a misdemeanor. Treating and entertaining are forbidden. Legal expenditures include payments for public speakers and musicians, the personal traveling expenses of candidates, the rent of halls, the cost of printing, postage, telegraph, and other messenger service, the hire of clerks, challengers and canvassers, and the use of carriages to convey infirm or disabled voters to and from the polls. Contributions of candidates are limited according to the number of voters, and candidates and committees are required to file sworn state-Failure to file on ments of expenses. committees is made a misdemeanor, while the filing of the statement by candidates is a pre-requisite for holding office or receiving salary and failure to file is punishable by a fine limited to \$1,000. Actions for violation of the law may be brought at any time during the term of office. The act does not apply to village. township, or school district elections.

Mississippi. Ann. Code, 1892, secs. 1597, 3275. Penalty for treating or bribing voters, fine and imprisonment.

Missouri. Laws, 1893, p. 157. Requires a statement of receipts and expenditures to be filed by committees and candidates. Failure causes forfeiture of office. Defines legitimate expenses, limits the amount that can be expended according to the number of voters, prohibits treating by candidates and provides punishment for bribery and betting.

Laws, 1897, p. 108. Prohibits use of corporation funds for political or campaign purposes, and places penalties on employers for bribing employees.

Montana. Pen. Code, 1895, secs. 74-111. It is made a misdemeanor to furnish money at elections for any purpose except for holding public meetings, for printing and circulating ballots, handbills, and other papers. Solicitation of and payments by candidates, forbidden. Expenses of candidates are limited and candidates and committees are required to file sworn, itemized statements of expenditures. Penalty for violation, fine and imprisonment. Betting on elections or giving away refreshments with purpose of influencing an elector are made misdemeanors. Bribery is punishable by fine and imprisonment. If it is proven before any court for the trial of election contests or petitions that any corrupt practice has been committed by or with the actual knowledge and consent of any candidate elected, his election is void.

Laws, 1905, c. 99. Extends penalties of the general election law to offenses at primaries.

Nebraska. Comp. St. 1903, secs. 2103-06. Pro-

hibits use of corporation funds for political or campaign purposes.

secs. 3426-48. Requires candidates and political committees to file sworn, itemized statements of expenditures. Candidates' expenses are limited according to the number of voters. Contributions to defray expenses of naturalization are prohibited. Treating, entertainment, and other expenditures not expressly permitted by law are made misdemeanors.

secs. 4234, 7891. Betting on elections punishable by fine. Liquor not to be given away on election days.

Laws, 1905, c. 66. Bribery, a misdemeanor punishable by fine, from \$100 to \$500, or by imprisonment not exceeding a year, or both, in the discretion of the court.

Nevada.¹ Comp. Laws, 1900, secs. 1606, 1672-75. Betting on elections or giving away liquor on election days made misdemeanors. It is made a felony to offer a bribe, or to furnish or procure entertainment, or to convey persons to polls, or to furnish any money or property to promote elections except for the expense of holding public meetings or printing and circulating ballots, handbills, and other papers.

New Hampshire. Pub. St. 1901, c. 39, secs. 10–13. 20. Using liquor to influence voters punishable by fine. Offering reward or contributing money or any other valuable thing to influence persons in voting punishable by fine or imprisonment. Fine, divided between prosecutor and the county. Inquest in case of alleged bribery to be made by any justice of the peace or police judge upon written complaint of five voters.

¹Laws, 1899, c. 108. Repeals law, 1895, c. 103, requiring candidates and election committees to file statements of expenses.

New Icrsey. Gen. St. 1895, p. 1317, 1370. Betting on elections prohibited. Bribing voters punishable by fine or imprisonment or both.

Laws, 1896, c. 173. Made unlawful to solicit money from or to soll tickets, etc. to candidates.

New Mexico. Comp. Laws, 1897, sec. 1636, 1662. Penalty for bribery of voters, fine and imprisonment and exclusion forever from franchise or office.

New York. Laws, 1890, c. 94, and 1892, c. 693. Every candidate is required to file sworn, itemized statements of expenses showing in detail all sums of money contributed or expended by him directly or indirectly or by others in his behalf. Penalty for violation imprisonment not exceeding a year and forfeiture of office. Assessment of officers for political purposes made a misdemeanor.

Laws, 1895, c. 155. Any person excepting authorized representative of political party soliciting money from a candidate or seeking to induce him to purchase tickets, etc. is guilty of a misdemeanor.

Laws, 1895, c. 885. Made a misdemeanor to furnish money or entertainment to induce attendance at polls but expenses for conveying electors to polls, for furnishing music, or for rent of halls, or for printing and circulating handbills, books, and other papers are lawful.

Laws, 1806, c. 112, amended by Laws, 1904, c. 205. Unlawful to give away liquor within specified distances of voting places while polls are open.

Laws, 1900, c. 70. Is made a misdemeanor to solicit money or other property from candidates for newspaper support.

Laws, 1899, c. 302, as amended by Laws, 1900, c. 737. Upon the advice of the governor the attorney

general is to assign deputies to act as counsel for the state superintendent of elections and to take charge of prosecutions for crimes against the elective franchise. Extraordinary terms of court may be called if necessary.

Laws, 1905, c. 625. Bribery at elections is made a fe.ony punishable by imprisonment not exceeding five years; giving a bribe also disqualifies for holding office and receiving a bribe disfranchises for five years.

North Carolina.¹ Laws, 1895, c. 159. Bribery, betting, treating, or giving away liquor on election days made misdemeanors.

North Dakota. Rev. Codes, 1899, secs. 6855-60. 6890. Bribery at elections made punishable by fine or imprisonment or both, also by disfranchisement. It is made a misdemeanor to bet upon elections or to contribute money to promote the election of any candidate except for expenses of holding public meetings and for the printing and circulating of handbills, and other papers.

Olio.² Anno. and Rev. St. 1900, secs. 2966-48-49-51, 6339, 6448. 6948, 7039-42. Bribery at elections punishable by fine or imprisonment or both; giving a bribe also forfeits office on part of offender and receiving a bribe excludes from suffrage for five years. Betting on elections or giving away liquor punishable by fine or imprisonment. Any candidate at a primary election paying or promising a bribe to any elector becomes ineligible for office and disquali-

 $^{^{1}} Laws,\ 1897,\ c.\ 185.$ Repeals provision of 1895 requiring candidates to file statement of election expenses.

Laws, 1902, p. 77. Repeals Rev. St. 1900, sec. 3022, subd.
 1-24 (Law, 1896, p. 123) requiring candidates and committees to file statements of election expenses.

fied for voting or being nominated at such election or convention.

Laws, 1904, p. 107. Provides penalities for bribery at primary elections.

Oklahoma. Rev. and Anno. St. 1903, secs. 1977–82, 2010. Bribery at elections made punishable by fine or imprisonment or both, also disfranchises offender. Betting upon elections or furnishing money for elections either on the part of candidates or of others to promote the election of any person made a misdemeanor. Use of money permitted for expenses of holding public meetings and for printing and circulating ballots, handbills, and other papers.

Oregon. Const. 1859, art. 2, sec. 7. The giving or offering of a bribe by a candidate causes forfeiture of office.

Codes and St. 1901, secs. 1900-01. Penalty for bribery at elections, imprisonment; for giving away liquor, fine or imprisonment or both.

Pennsylvania. Const. 1874, art. 7, sec. 1. Officials before entering upon duty are required to swear that they have not contributed or promised to contribute either directly or indirectly any valuable thing to procure their nomination or election or appointment except for expenses expressly authorized by law.

art. 8, sec. 8, 9. Bribery causes forfeiture of right to vote and forever disqualifies for holding office.

Laws, 1817, p. 204. Betting on elections, a misdemeanor.

Laws, 1874, p. 64. Contributions by candidates except for specified purposes are prohibited.

This act excepts out every direct and indirect purchase of the vote or influence of an elector, and every act for any

corrupt purpose whatever, incident to an election. Com-

monwealth v. Walter, 1877, 86 Pa. 15.

The statute, however, does not prohibit the employment of friends to canvas the district on behalf of a candidate, and to secure the return of delegates or the casting of votes for him; such services are a good consideration for a promise to pay for them. Williams v. Commonwealth, 1879, 91 Pa. 493.

Laws, 1881, p. 70. Penalty for bribery at nominating conventions or primary elections, fine and imprisonment.

Laws, 1883, p. 96. Assessment of public officers by campaign committees punishable by a fine not to exceed \$100.

Laws, 1887, p. 113. Furnishing liquor on election day, a misdemeanor.

Laws, 1889, p. 16. Bribery at elections made a misdemeanor; punishable by fine not over \$1,000 and imprisonment limited to one year.

Laws, 1897, p. 275. Assessment of public officers for political purposes by heads of departments punishable by fine limited to \$1,000 or by imprisonment not exceeding a year, or by both in the discretion of the court.

Laws, 1897, p. 276. Payment of poll tax for other persons except on written order, a misdemeanor.

Laws, 1906, No. 6. Prohibits municipal officers or employees in cities of the first class from soliciting or contributing funds for political purposes. Penalty, a fine limited to \$500 and forfeiture of office.

Laws, 1906, No. —.¹ Requires candidates and treasurers of political committees to file sworn statements of nomination and election expenses if the amount exceeds \$50. All expenditures of political committees must pass through the hands of the treas-

^{&#}x27;Approved by the Governor, Mar. 5. Not yet published.

urer. Legal expenditures are limited to the following purposes: 1. for printing and traveling and incidental personal expenses, stationery, advertising, postage, express, freight, telegraph, telephone and public messenger services; 2. for dissemination of public information; 3. for political meetings, demonstrations and conventions and for the pay of speakers; 4. for renting and furnishing offices; 5. for the payment of clerks, janitors, messengers, etc. actually employed; 6. for election watchers; 7. for taking voters to and from the polls; 8. for bona fide legal expenses. Contributions for political purposes by corporations are forbidden. Filing of statement is a pre-requisite for entering upon office and any five electors may institute an inquiry into the accounts filed by candidates or committees. Any violation of the act is punishable by fine ranging from \$50 to \$1,000 or by imprisonment from one month to two years or both at the discretion of the court.

Rhode Island. Gen. Laws, 1896, c. 14. Penalty for bribing voters, fine or imprisonment or both.

South Carolina. Cr. Code, 1902, secs. 271-4. Betting on elections, a misdemeanor. Bribery punishable by fine and imprisonment.

Laws, 1904, no. 231. Treating within a mile of a voting precinct on election days made punishable by fine or imprisonment with labor.

South Dakota. Pen. Code, 1901, sees. 7510, 7545-54. Furnishing money for elections except for expense of holding public meetings and of printing and circulating ballots, handbills, and other papers, a misdemeanor. Bribery at elections made an infamous crime punishable by imprisonment, forfeiture of office, and disfranchisement for five years. Giving away liquor or betting upon elections, misdemeanors.

Tennessee. Laws, 1897, c. 14. Prohibits bribes either before or after election.

Laws, 1897, c. 18. Use of corporation funds for political or campaign purposes, unlawful.

Texas. Const. 1876, art. 16, sec. 1. Requires every legislator and state officer before entering upon his duty to swear or affirm that he has not directly or indirectly paid or promised to pay anything as a reward for the giving or withholding a vote at the election at which he was elected.

Sec. 5. Bribery to secure election disqualifies.

Laws, 1905, c. 11. Managers of headquarters, clerks and agents and others handling funds or using influence for any political party or for any candidate are required to file sworn, itemized statements of receipts and expenditures, showing in detail the source of the funds or support received and the purposes for which they were employed and whether there is reason to suspect that any person furnishing funds or influence was acting for or in the interest of any corporation. Candidates are also required to file sworn, itemized statements of expenses including amounts paid to newspapers, hotels, and for traveling. Failure to file, a misdemeanor punishable by a fine of not less than \$200 nor more than \$500 and in the discretion of the court, by a sentence to work on the roads not less than thirty days nor more than one vear.

Bribery, whether under the guise of a wager or otherwise, is made a felony; also disqualifies for office. Giving away liquor on election days, a misd meanor. Paying the poll tax of another except as permitted by

law is a felony punishable by imprisonment for not less than two nor more than five years. Advancing money to another for paying poll tax, or giving or receiving a consideration for a poll tax receipt made misdemeanors. Issuing a poll tax receipt to a fictitious person is punishable by imprisonment of from three to five years. Assessment of public officers or employees for political purposes made a misdemeanor.

Political advertising is to be labeled as such and to be paid for at regular rates; the penalty for violation is a fine of not less than \$500 nor more than \$1,000 and imprisonment in jail or work on the roads not exceeding thirty days.

Contributions by corporations for political purposes are prohibited; if made with the connivance of its president, financial agent, or treasurer, corporation is to forfeit its charter.

Utah.¹ Laws, 1890, c. 35. Giving away liquor on election days, a misdemeanor.

Laws, 1896, c. 56. Bribery at elections punishable by fine or imprisonment or both. Betting on elections, a misdemeanor.

Vermont. St. 1804, secs. 5113-14. Provides penalties for bribery and for giving away liquor at elections.

Laws, 1903, c. 6. Prohibits payment or promise of money to secure nomination except for personal, traveling, printing, and incidental expenses.

Virginia. Code, 1904, secs. 144b, 145a, 3824, 3847, 3853. Expenditures by candidates or by others in their behalf are prohibited except for printing or ad-

The provision of 1896, requiring candidates and election committees to report expenses, was repealed in 1897.

vertising in newspapers or for securing halls for public speaking; penalty, fine or imprisonment. Every candidate is required to file a sworn statement setting forth in detail all sums of money contributed, disbursed, expended, or promised by him and by others in his behalf to secure his nomination or election and also all sums contributed, expended, or promised by him in connection with the nomination or election of other persons at such election. The statement is to show the date and the persons to whom and the purposes for which all such sums were paid or promised; penalty for failure to comply, a fine not exceeding \$5,000. Conviction of violation of law makes election null and void unless contestant is entitled to office. Penalties are provided for bribing election officers, for giving or receiving bribes, for giving away liquor, and for betting on elections.

Washington. Cod., 1901, secs. 1748-49. Bribery of voters or giving away liquor on election day punishable by fine or imprisonment or both.

West Virginia. Const. 1872, art. 4, sec. 1. Bribery in an election disfranchises offender.

Code, 1899, c. 5, secs. 8–11. Provides penalties for bribery, treating, and for betting on elections.

Wisconsin. Rev. St. 1808, secs. 13, 4478-81, 4535, 4542b as amended by Laws, 1800, c. 341. The penalty for bribery at any election is imprisonment, at any caucus or preliminary meeting, fine or imprisonment or both; conviction of bribery excludes from right of suffrage unless restored to civil rights; office obtained by bribery is to be deemed vacant. Betting on any election is punishable by fine and loss of vote.

Secs. 4543b-f as amended by Laws, 1005, c. 502.

Contributions of money to aid the nomination or election of any person to the legislature by non-resident of district are prohibited; penalty for violation, imprisonment; not to apply to payments for his own personal expenditures by any person participating in a campaign nor to contributions made to committees to be expended for general purposes. A sworn statement is to be filed by every candidate showing in detail each item in excess of \$5.00 contributed, disbursed, expended, or promised by him and to the best of his knowledge by others in his behalf in endeavoring to secure the nomination or election of himself or of any other person and also showing the dates when and the persons to whom and the purposes for which such sums were paid, expended, or promised. Such statement shall also set forth that the same is as full and explicit as affiant is able to make it; the county clerk is to publish names of candidates failing to comply and the district attorney is to examine all statements filed and to institute prosecutions for violations; penalty for violation is fine of not less than \$25 nor more than \$500. Accounts of disbursements by political committees are to be kept by treasurer through whose hands all funds are to pass and who is required to keep and file a full and detailed statement of the sums received or disbursed, giving the date when and the person for whom received and to whom paid and the object and purpose for which the sum was received or disbursed, together with a complete account of the outstanding financial obligations of the committee; violation by treasurer punishable by imprisonment.

Laws, 1905, c. 492. Prohibits political contributions by corporations. Penalty, fine of not less than \$100 nor more than \$5,000 or by imprisonment of

from one to five years or both fine and imprisonment in the discretion of the court.

Wyoming. Const. 1889, art. 6, sec. 8. Requires that every legislator and every judicial state or county officer before entering upon duty swear that he has not paid or contributed or promised to pay or contribute directly or indirectly any money or other valuable thing to procure his nomination or election except for necessary and proper expenses expressly authorized by law.

Rev. St. 1899, sec. 379. Betting on elections disqualifies for voting or for holding office.

30

SUMMARY

The leading provisions of contemporary laws may be briefly outlined under the following headings:

1. publicity; 2. restrictions on contributions; 3. limitations on expenditures; 4. procedure for judicial inquiry; 5. penalties.

Publicity

Statements of receipts and expenditures. The requirements made in the different states for filing sworn, itemized statements vary. Provisions exist for statements by candidates, political agents, committees, and others handling funds.

Candidates. For statements required of candidates compare the laws of Ariz. Cal. Col. Conn. Mass. Minn. Mo. Mont. Neb. N. Y. Tex. Va. and Wis.

Committees. Compare Ariz. Cal. Col. Conn. Mass. Minn. Mo. Mont. Neb. Tex. and Wis. for statements required of political committees.

Political agents. The English statute of 1883, 46 and 47 Vict. c. 51, explicitly requires that every candidate and also his head agent file sworn statements giving the names of all persons employed and the amounts paid to them.

Others handling funds. The Texas law of 1905 has the inclusive provision that "all others handling funds" also file sworn, itemized statements.

 $^{^{\}circ}$ For a comparison of the laws of the different states see, Laux and Judicial Decisions.

Publication of statements. Some of the laws merely require that the statements be filed for public inspection; others provide for advertisement in newspapers, while still others require publication in the form of a public document.

Compare laws of Cal. Col. Conn. Mass. Neb. Va. Wis. England, and Ontario.

Restrictions on contributions

Among recent attempts to limit the source of funds are those prohibiting contributions by corporations. Limitations have also been placed upon the solicitation of candidates, and the assessment of public officers and employees. Prohibiting contributions by non-residents of district to aid in the nomination or election of any person to the legislature is a further attempt to limit the sources of funds.

Corporate contributions. Compare the laws of Mo. Neb. and Tenn. for 1897; Fla. 1898; Ky. 1900; and Wis. 1905. Forfeiture of charter or of the right to do business within the state are among the penalties imposed for violation.

Restrictions on non-residents. See Wis Rev. St. 1898, sec. 4543b, prohibiting non-resident contributions.

Solicitation of candidates. Compare laws of Cal. Conn. Ill. and N. J. making solicitation of candidates unlawful. Contributions to authorized committees or agents permitted.

Political assessments. See U.S. Act of Cong. Aug. 15, 1876, c. 287, sec. 6, forbidding assessments.

Limitations on expenditures

Expenditures are limited as regards the purpose of payments, the amount that may be spent, and the agency for the disbursements of funds.

Purpose of payments. Among the payments prohibited are those for bribery, betting, treating, and entertainment.

Bribery. Giving or receiving a consideration for a vote was an offense at common law. Rex v. Pitt. 1762, 3 Burr. 1335.

CORRUPT PRACTICES AT ELECTIONS

32

Betting. Compare laws of Ariz. Cal. Me. Mo. Neb. N. D. Okla. Pa. Tex. and Wis. making betting on elections illegal.

Treating and entertainment. Compare laws of Ark. Fla. Miss. N. H. N. C. and S. C. prohibiting treating and entertainment.

Expenditures either prohibited or closely limited include: payments for naturalization fees, or poll taxes of others; the hiring of conveyances and an undue number of workers; and the payment of money for bands, torches, badges, and other insignia.

Naturalization fees. Compare laws of Conn. and Neb. making payment of fees for another unlawful.

Poll taxes. See Tex. Laws, 1905, c. 11 for strict prohibitions against paying or pledging the poll tax of another.

Hiring conveyances, bands, etc. The English law of 1883 makes hiring conveyances to bring electors to the polls an illegal practice, and paying for bands, torches, etc. illegal payments.

Election workers. See the English law, 1883, which deprives election workers of vote, and the Minn. law of 1895, c. 277, which limits their employment for designated duties.

Amount spent. In several states the amount which may be spent is limited either according to the number of voters or to the amount of salary attached to office.

Number of voters. Compare the law of Minn. 1895, and of Mo. 1893, for limitations based on number of voters.

Salary. The Cal. law, 1893 limits the expenditures of candidates according to salary.

Responsibility for expenditures. Requiring expenditures to be made exclusively through designated and duly authorized agents secures unity and responsibility in disbursements.

The Conn. law of 1905 requires all election expenses to be paid by treasurers of committees, or by political agents, except specified expenditures permitted to candidates.

Procedure for judicial inquiry

Among the methods employed to secure judicial inquiry into election offenses are the following:

Initiative by citizens. This method enables any elector or group of electors to institute proceedings.

Compare laws of Cal. 1893, and of Conn. 1905, for this method.

Suit by candidate. Another method of procedure is to authorize the candidate having the next highest number of votes to bring suit in the name of the state in case the attorney general fails to act upon a petition charging violations of the law.

For an application of this plan see the Mo. law of 1893.

Official inquiry. The laws quite generally provide for official initiative to bring offenders to trial.

Compare the various $m \varepsilon thods$ of Cal. Conn. Mass. Minn. N. Y. and Wis. in providing for inquiry into election offenses.

Trial of petitions. Usually several judges preside in the election court and there is no jury. In some states there are only two judges and a unanimous decision is necessary for conviction.

Compare laws of Conn. N. Y. and Minn. for different methods.

Appeals. Provision is made for appeal from election courts to higher courts as in other cases.

In Cal. whenever an election is annulled, appeal must be taken within ten days. In Ontario appeals are given precedence over all ordinary cases.

Penalties

The penalties of the law vary according to the nature of the offense and the statutory provisions of the different jurisdictions.

Fines and imprisonment. The severity of the penalties varies greatly in the different states, ranging from trifling sums to thousands of dollars for fines and from brief periods of confinement in jail to long imprisonment in the penitentiary.

For a variety of penalties compare the laws of Cal. Conn. Mass. Minn. Mo. Neb. N. Y. Va. and Wis.

Disfranchisement. Exclusion from the right of suffrage for varying periods is made the penalty for different corrupt practices.

The Illinois law of 1899, c. 46, disfranchises the bribe taker from five to fifteen years, and for a second offense, forever. Was held constitutional, Christie v. People, 1903, 206 Ill. 337.

Kentucky makes both the giving and the taking of a bribe at an election punishable by loss of suffrage.

Disfranchisement of district. During the 19th century quite a number of election boroughs in England were disfranchised on account of the prevalence of bribery.

Forfeiture of office. In England it is a recognized principle that bribery disqualifies for holding office. In the United States constitutional or statutory provisions making bribery a disqualification for office are found in most of the states.

See State v. Elting, 1883, 29 Kan. 397; State v. Collier, 1880, 72 Mo. 13; Stale v. Olin, 1868, 23 Wis. 309.

But in the absence of such provisions the courts have generally held that bribery would not disqualify a candidate for holding office.

People v. Thornton, 1881, 25 Hun. (N. Y.) 456; Com. v. Shaver, 1842 3 W. & S. (Pa.) 338; People v. Goddard, 1885, 8 Col. 461.

Under some of the laws requiring statements of

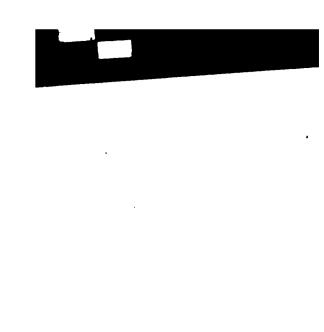
election contributions and expenditures, failure to conform brings forfeiture of office.

Compare laws of Cal. Minn. Mo. and Neb. respecting for-feiture.

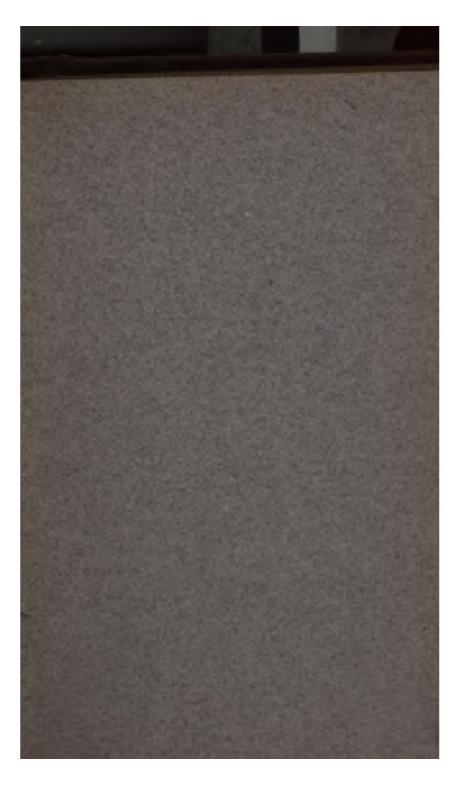
The N. Y. statute provides for forfeiture of office for corrupt practices but has no proceeding to enforce the penalty.

Annulment of election. An election secured by bribery is void.

Universally the rule. Wayne Co. v. Judges, 1895, 106 Mich, 166; People v. Thornton, 1881, 25 Hun. (N. Y.) 456; State v. Purdy, 1874, 36 Wis. 213.



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COMPARATIVE LEGISLATION BULLETIN
NO 4

EXEMPTION OF WAGES

MARGARET A. SCHAFFNER

MARCH 1/06

In the regular session of the Wisconsin legislature in 1905, many hills were introduced relating to garnishment and exemptions. Assembly bill No. 48 passed both houses and was vetoed by the Governor (see Assembly Journal, 1905, p. 1316). Bill of this nature will be introduced in the next session of the legislature. This bulleten gives in a condensed form the laws of different states and countries relating to exemption of wages. It was hoped to include other exemptions but the task was too great for the present.

The data included in this bulletin would be difficult to obtain during the rush of the legislative session. It is hoped that it will aid materially in the preparation of bills.

CHARLES McCARTHY Librarian, Legislative Reference Department 0

EXEMPTION OF WAGES

MARGARET A. SCHAFFNER

COMPARATIVE LEGISLATION BULLETIN—NO 4—MARCH 1906

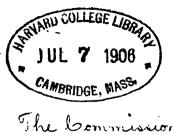
Compiled with the co-operation of the Political Science Department of the University of Wisconsin

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CONTENTS

REFERENCES	PAGE . 3
NATURE OF THE RIGHT Definition Kinds of exemptions Liabilities enforceable against exemption rights. Waiver	. 5 . 5 . 7
LAWS AND JUDICIAL DECISIONS	. 10
CONSTRUCTION	. 38

REFERENCES

American State Reports. Exemption of wag(s, salaries, and earnings. San Francisco, 1905 (In vol. 102, p. 81-103)

Reviews and classifies leading American decisions under the following headings: exemption as dependent upon the nature of employment, the character of compensation, the classes of persons entitled, the use of the fund, the reservation of a specified amount, and the period during which amount was earned. Also considers the phraseology and the construction of exemption statutes.

Cyclopedia of law and procedure. New York, 1901-1906.

See title Exemptions for a brief summary of the legal

doctrine relating to exemption of earnings, wages, and salaries.

Elster, Ludwig. Wörterbuch der Volkswirtschaft. 2 vols. Jena. 1898.

See title Arbeiterschutzgesetzgebung, subtitle Bestimmungen über Lohnzahlung discusses foreign legislation on exemption of wages.

France—Travail, Office du (Ministère du Commerce) Saisiearrêt sur les salaires. Paris, 1899.

Gives results of an inquiry by the bureau of labor of the French ministry of commerce in response to a request from a senatorial committee charged with the examination of proposed changes in the law relating to the attachment of wages of working people, clerks, etc.

Hubbell, J. H. Legal directory. New York, 1905.

Includes a synopsis of laws relating to exemption of wages in the United States, Canada, and Mexico.

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Pic, Paul. Traité élémentaire de législation industrielle. Les lois ouvrières. Paris, 1903.

Treats briefly exemption of wages from attachment, garnishment, or other mesne process in foreign countries, p. 712-27.

Rood, John R. Treatise on the law of attachments, garnishments, judgments, and executions. Ann Arbor, 1901.

Contains a collection of leading cases with notes.

U. S. Labor, Department of. Foreign statistical publications—France. Bulletin, March, 1901, no. 33, p. 336– 40.

A brief review of conditions regarding wage exemptions and attachments in France.

NATURE OF THE RIGHT

Definition

The general idea of exemption rights for debtors is set forth in the following definition: "An exemption is a privilege or immunity allowed by law to a judgment debtor by which he may hold property to a certain amount or certain classes of property free from all liability to levy and sale on execution, attachment, or other process issued in pursuance of and for the satisfaction of a money judgment."

Kinds of exemptions

Exemptions for debtors may be grouped according to the classes of property under homestead and personal property exemptions. From the view point of the solvency of the debtor, those exemptions which are permitted by the law in cases of bankruptcy are also to be considered.

Homestead exemptions. Constitutional and statutory provisions are found in most of our states exempting homesteads from execution. These exemptions vary both in amount and value, country

¹ See 18 Cyc. Law and Proc. 1374.

homesteads varying within limits of from forty to one hundred and sixty acres and ranging from a hundred to five thousand dollars and upwards in value. City homesteads of equivalent values are similarly provided. Certain states place no limitation in value upon homestead exemptions.

Personal property exemptions. Among the classes of personal property commonly exempt may be enumerated: means for getting a living, including the libraries and instruments of professional men, farming utensils and means of reproduction, work animals, live stock, vehicles, equipment, tools and implements of trade, apparatus, and stock in trade; articles furnishing means of support or comfort, such as food, provisions, and supplies, wearing apparel, household furniture and goods; life insurance money; pension and bounty money and property purchased therewith; proceeds of exempt property; choses in action; property or money in lieu of specific exemption; and salary, wages, or earnings.

Exemptions in bankruptcy. The debtor who secures discharge from further liability in case of bankruptcy besides being entitled to the usual homestead and personal property exemptions provided

¹ Salaries of public officers are generally exempt; the grounds for this exemption are: 1. that the state or municipality is not subject to garnishment, 2. that public policy demands such exemption, 3. that the exemption of salary is within the statutory provision. Compare 54 L. R. A. 566. For recent legislation, however, see Ill. Laws, 1905, p. 285; N. Y. Laws, 1905, c. 175; N. D. Laws, 1905, c. 69; and Ut. Laws, 1905, c. 96.

in the several states secures the additional advantage of reserving his future earnings intact against execution for past debts.

Exemption of wages. The enumeration of the various classes of exemptions evidences the fact that the exemption of wages from execution, attachment, garnishment, or other mesne process forms but one part of the general subject of exemptions.

Liabilities enforceable against exemption rights

Among the more common liabilities enforceable against exempt property are: pre-existing liabilities, debts not founded in contract, purchase price, debts for necessaries, including board and lodging, debts for wages and material, and debts due the government.

Waiver

In certain jurisdictions it is held that the exemption right may be claimed or waived at will;9 in

¹ Bankruptcy Act, July 1, 1898, as amended by Act, Feb. 5, 1903. (U. S. Comp. St. 1901, p. 3418, and U. S. Comp. St. Supp. 1903, p. 410)

² See Brown v. Reiser, 1890, 8 Pa. Co. C. 416; and Finns v. Banker, 1888, 5 Pa. Co. C. 311.

³ See 18 Cyc. Law and Proc. 1387.

^{*}See In re Tobias, 1900, 103 Fed. 68.

³ See Lenhoff v. Fisher, 1891, 32 Neb. 107.

See Thomas v. Glasgow, 1892, 2 Pa. Dist. 711.

⁷ See Dickinson v. Rahn, 1901, 98 III. App. 245; contra Frutchey v. Lutz, 1895, 167 Pa. St. 337.

^{*} See U. S. v. Howell, 1881, 9 Fed. 674.

See Keybers v. McComber, 1885, 67 Cal. 395; Moss v. Jenkins, 1896, 146 Ind. 589; Fogg v. Littlefield, 1877, 68 Me. 52.



EXEMPTION OF WAGES

8

others the debtor is not allowed to waive his exemption in property exempt for the use of his family.¹

¹ See Burke v. Finley, 1893, 50 Kan. 424; Ross v. Lister, 1855, 14 Tex. 469; Powell v. Daily, 1896, 163 Ili. 646.

LAWS AND JUDICIAL DECISIONS'

The laws exempting wages in different countries may be grouped into three general classes: 1. those providing for total exemption without reference to amount of wages earned; 2. those granting total exemption up to a certain maximum amount; 3. those providing for the exemption of a proportionate part of wages.

Grouping leading foreign countries according to the main provisions of their law, Germany, England, Norway, and Brazil fall in the first group; Hungary, Austria, and Spain in the second; and Belgium, France, Luxemburg, and Russia in the third.

The majority of the different laws in the United States belong to the second and third groups; while

¹ In summarizing the main features of the exemption of wages, attention is centered largely on points which relate to the positive rights conferred rather than to the remedies developed to make those rights effective. But while limitations of space forbid any considerable reference to the processes against which the right of exemption may be asserted or to the proceedings to enforce and protect the right it must not be forgotten that the difference between an effective law and one which secures but indifferent results is more frequently found in the remedies provided for maintaining the right than in the amount of the property exempt.

² See Pic, Traité élémentaire de législation...p. 712-27; also Elster, Wörterbuch, title 'Arbeiterschutzgesetgebung.'

a few states¹ have constitutional or statutory requirements making exemptions as complete as the foreign countries of the first group.

Foreign countries²

Germany. The law of 1869 modified by the law of 1897 provides for the total exemption of wages without reference to the amount earned.3 If the laborer after the execution of the work or furnishing of services voluntarily allows his remuneration to remain unclaimed after the day on which he could claim pay, the wages or salary may become liable for debts. But with the exception of this voluntary waiving of rights the law specifically states that wages and salaries are not subject to garnishment or attachment proceedings except in favor of the relatives of the employee who under the law have a right to support from him. The law further makes employers paying wages or salaries to creditors of employees liable to a fine limited to 150 marks (\$35.70) or imprisonment not exceeding four weeks. The assignment of wages is also forbidden.

See Tex. Const. 1876, art. 16, sec. 28; also Ga. Const. 1877 as amended in 1887 and Civ. Code, 1895, sec. 4732.

^{*}The references to foreign money are also given in terms of our own but the amount of the exemption must be considered from the standpoint of purchasing power in the several countries in order to understand its real significance. A further point to be considered in a comparison of the several countries is the proportion that the exemption bears to the usual wage earned by able bodied artisans maintaining a fair standard of life.

See Law of June 21, 1869, and of Mar. 29, 1897; also sec. 148 of Gew. O. Ziff. 13.

Norway. The law of March 29, 1890, provides for total exemption of wages without reference to the amount earned.

England. The Merchant Shipping Act, 1854, 17 and 18 Vict. c. 104, ser. 233, provides that seamen's wages due or accruing shall not be subject to attachment or arrestment from any court.

Under the Wages Attachment Abolition Act, 1870, 33 and 34 Vict. c. 30, no attachment of wages of any servant, laborer or workman is permitted.

The salary of a secretary to a company amounting to two hundred pounds (\$973.30) a year is not "wages" of a "servant" within the Wages Attachment Abolition Act, and is therefore not exempted from attachment by that act. Gordon v. Jennings, 1882, 9 Q. B. D. 45.

The exemption of wages is less effective in England than in several continental countries because the assignment of wages is permitted.¹

Australia. The states of the Australian commonwealth have quite generally a maximum exemption of wages and salaries amounting to two pounds (\$9.733) a week. The Victoria act of 1898, no. 1573 and the New South Wales act of 1900, no. 6, are typical of Australian statutes for wage exemptions

Canada. The laws for the exemption of wages in Canada are somewhat similar to those of the United States. Manitoba, Rev. St. 1902, c. 68, is typical of

¹ See Supreme Court of Judicature Act, 1873, 36 and 37 Vict. c. 66, sec. 25, subd. 6.

those provinces which grant total exemption up to a certain maximum amount, while Quebec, Code Civ. Proc. 1902, art. 599, sec. 11, illustrates those which exempt a proportionate part of the wages earned.¹

New Zealand. The Act of 1895, no. 22, exempts wages not exceeding two pounds (\$9.733) per week. Any surplus above that sum is liable to attachment but the costs are not chargeable against the workman unless the creditor recovers a sum equal to or greater than costs.

Austria. The law of Apr. 25, 1873 modified by the law of May 26, 1888, provides for total exemption of wages, not exceeding eight hundred florins (\$385.80) a year, for laborers whose time is fixed by law, agreement, or usage at a year at least and whose employment ceases only upon three months notice. Wages of other laborers are exempt up to two-thirds of the total amount.

Hungary. The law of Civil Procedure, June 1, 1881, art. 62, exempts wages below one florin, fifty kreutzer (\$0.623) per day.

Spain. The Civil Code provides for the total exemption of wages below twenty-four réaux (approximately \$1.158) per day.

For a summary of Canadian exemption statutes see Hubbell, Legal directory, 1905, p. 816-54.

Switzerland. The Swiss law of Apr. 11, 1889, leaves the care of fixing the proportion of wages which may be attached to the judicial authority.

France. The law of Jan. 12, 1895, exempts nine-tenths of the wages of laborers; emoluments or salaries not exceeding 2,000 francs (\$386) are similarly exempt. The law also permits an assignment not to exceed one-tenth of wages. (The assignable tenth is distinct from the attachable tenth and must not be confused with it.) Finally the employer is also permitted to retain a tenth,-distinct both from the assignable and the attachable tenth,-for advances in cash made to an employee. In case of the attachments, assignments and retentions permitted by the law all being enforced against the laborer, he is still guaranteed at least seven-tenths of his wages. The procedure under the French law is so cumbersome that the cost of proceedings against the one-tenth attachable frequently exceeds the amount of the debt. This works to the general disadvantage of debtor, creditor, and employer.1

Belgium. According to the law of Apr. 18, 1887, four-fifths of the wages of laborers are exempt. The rule also applies to salaries not exceeding 1200 francs (\$231.60).

¹ Various amendments to the French law have been proposed and certain modifications of the law are now (Feb. 1906) under consideration.

Luxemburg. The law of July 12, 1895, exempts nine-tenths of wages not exceeding six francs (\$1.158) a day, and four-fifths of wages exceeding that amount.

Russia. The law of 1886 exempts one-third of the wages of an employe having a family to support, and one-fourth the wages of others.

United States

Act of Cong. June 7, 1872 (Comp. St. 1901, sec. 4536) No wages due or accruing to any seaman or apprentice are subject to attachment or arrestment from any court.¹

Alabama. Const. 1901, art. 10. Makes general provision for exemptions.

Code, 1896, sec. 2038, as amended by Acts 1898–99, no. 734. Exempts to amount of \$25 per month wages, salaries, or other compensation for personal services of laborers or employees residents of the state. The fact of such indebtedness being disclosed by answer of garnishee, the levy is void and is to be dismissed by the court unless plaintiff contests answer of garnishee.

sec. 2074. Wages or salary of deceased employe to a sum not exceeding \$100 may be paid to widow or to person having control of his minor

¹ See The John E. Holbrook, 1874, (U. S. D. C.) 7 Ben. 356; Hitchcock v. The St. Louis, 1891, (U. S. D. C.) 48 Fed 312; The Queen, 1899, (U. S. D. C.) 93 Fed. 834.

children, and the sum so paid is exempt as part of the \$1,000 in personality exempted to them.

sec. 3728. Set-offs not to defeat exemption of wages.

Alaska. Code Civ. Proc. 1900, sec. 273. Sixty days' earnings for personal services are exempt, if selected and reserved by the debtor at time of levy, if such earnings are necessary for family support.

Arizona. Civ. Code, 1901, secs. 388, 2732. Thirty days' earnings for personal services exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for support of his family residing in territory.

Arkansas. Const. 1874, art. 9. General provision for exemptions.

Dig. 1894, sec. 3717. Wages of laborers and mechanics for sixty days exempt from garnishment or other legal process provided defendant files with court issuing process a sworn statement that wages claimed amount to less than his constitutional exemption and that he does not own sufficient other personal property to exceed amount exempted by the constitution.

California. Const. 1880, art. 17, sec. 1. Provides for exemption laws in favor of heads of families.

Code Civ. Proc. 1903, sec. 690, subd. 9, 10. Seamen's and seagoing fishermen's wages and earnings not exceeding \$300 are exempt. Thirty days' earn-

ings for personal services are exempt when necessary for use of debtor's family residing in the state and supported in whole or in part by his labor; but where debts are incurred for common necessaries of life or have been incurred when debtor had no family residing in the state one-half of such earnings are subject to execution, garnishment or attachment to satisfy debts so incurred.

Colorado. Const. 1876, art. 18, sec. 1. "The general assembly shall pass liberal . . . exemption laws."

Anno. St. 1891, sec. 2567, as amended by Acts, 1894, c. 5 and Acts, 1903, c. 132. Sixty per cent of wages or earnings exempt from levy under execution, attachment, or garnishment provided debtor be the head of a family or the wife of the head of a family residing in the state and dependent in whole or in part upon such earnings for support. The entire sum exempt when wages do not exceed \$5 per week.

Connecticut. Gen. St. 1902, secs. 774, 777. No costs are to be taxed in favor of plaintiff unless he has made prior demand upon defendant for debt. Plaintiff not to recover costs exceeding one-half of amount of damages recovered.

sec. 836. No assignment of future earnings is valid against an attaching creditor unless made to secure a bona fide debt due at date of such assignment.

Laws, 1903, c. 95, as amended by Laws, 1905, c. 195. The sum of \$25 accrued by reason of personal services including wages due for personal services of any minor child is exempt from foreign attachment or execution, but no exemption for any debt incurred for personal board.

Delaware. Rev. Code, 1893, c. 111, sec. 1. Fifty per cent of wages for labor or service of any person and all wages of women and minors are exempt from execution.

c. 111 as amended by Acts, 1901, c. 209 (Applies only to New Castle Co.) Ninety per cent of wages for labor or service of any person residing within New Castle county is exempt from attachment and execution except for debts for board or lodging. Amount exempt not to exceed \$50. The ten per cent is liable for necessaries only. Only one attachment may be made. The total liability of the debtor for costs under any attachment is not to exceed ninety cents provided, however, that costs are to be paid out of the whole amount of wages.

District of Columbia. Code, 1901, amended, 1902, sec. 1107. Earnings are exempt from execution to the amount of \$100 each month for all actual residents who have provided for the support of a family in the district for two months preceeding the issuing of the writ or process.

Florida. Const. 1885, art. 10. Makes general provision for exemptions.

Rev. St. 1891, sec. 2008, 2009. Earnings for personal services of the head of a family are exempt. In case of attachment the person to whom money is due may make oath that money attached is due for personal labor and service and that he or she is the head of a family residing in the state and if such affidavits are not denied within two days after service of notice the process is to be returned and all proceedings under the same are to cease. If facts are denied by party issuing process matter is to be tried by court.

Georgia. Const. 1877, as amended in 1887, art. q. General provision for exemptions.

Civ. Code, 1895, sec. 4732. All journeymen, mechanics, and day laborers are exempt from garnishment on their daily, weekly or monthly wages whether in the hands of their employers or others.

A general waiver of the benefits of a laborer's exemption

in a note is void. Green v. Watson, 1885. 75 Ga. 471. Wages improperly in the hands of a magistrate through garnishment may be recovered by a rule against him. Curran v. Fleming et al. 1885, 76 Ga. 98.

A locomotive engineer's monthly wages are exempt.

Sanner v. Shivers, 1886, 76 Ga. 335.

And the monthly wages of a private secretary. Abrahams v. Anderson et al. 1888, 80 Ga. 570.

And the wages of a conductor on a street railway. Stuart v. Poole, 1901, 112 Ga. 818.

Wages of a superintendent in a factory are not exempt. Kyle v. Montgomery et al. 1884, 73 Ga. 337.

Nor of a railway passenger conductor. Miller & Bussey v. Dugas, 1886, 77 Ga. 386.

Laws, 1898, no. 19. Sending claims for debts out of state with intent to deprive any resident of his exemption rights made a misdemeanor punishable by fine ranging from \$10 to \$50 for each claim transferred.

Laws, 1902, p. 60. Wages to the amount of \$100 of deceased employee of corporation may be paid to widow or guardian of minor children and such sum is exempt from execution.

Laws, 1904, p. 79. Contracts made for assignment or pledge of unearned wages or salary are void.

Hauvii. Acts, 1901, no. 9, secs. 1, 8, as amended by Acts, 1903, no. 52. One-half the wages due every laborer or person working for wages are exempt from attachment, execution, distress and forced sale of every nature and description.

Idaho. Code Civ. Proc. 1901, sec. 3542. Thirty days' earnings for personal services are exempt when necessary for the use of debtor's family residing in the state.

Illinois. Const. 1870, art. 4, sec. 32. "The general assembly shall pass liberal . . . exemption laws."

Rev. St. 1903, c. 62, sec. 14. Wages to the amount of \$15 per week are exempt for the head of a family residing with the same. Only the surplus above such exempt wages is to be held by employer to abide the event of the garnishment suit. If costs of the garnishment exceed surplus so held the remainder is to be paid by plaintiff. In no case is any employer to be liable to answer for any amount not earned at the time of service of writ. At least

twenty-four hours before bringing suit a demand in writing is to be made upon the wage earner and the employer for the excess above the amount exempted. Receipt of such demand is to be endorsed thereon at the time of service and the return duly sworn before it is lawful to issue a summons or to require an employer to answer in any garnishee proceeding. Any judgment rendered without such demand duly proven and filed is void. The excess of wages is to be held by employer five days after service of demand.

secs. 32-34. Sending or assigning any claim for debt outside of state to be collected by proceedings in attachment, garnishment or other mesne process with intent to deprive a resident of Illinois of exemption rights is punishable by a fine of not less than \$10 nor more than \$50. In case of garnishment proceedings against non-residents the law of the state of residence controls.

Sending claim out of state to be collected when garnishee is within reach of our courts is a misdemeanor. Wabash R. Co. v. Dungan, 1892, 142 III. 248.

sec. 34a. Wages earned outside the state and payable out of the state are exempt from attachment or garnishment in all cases where the cause of action arose outside of the state, unless the defendant is personally served with process. In case there is no personal process the suit is to be dismissed at the cost of plaintiff.

If the creditor, debtor, and garnishee at the time of the creating of both debts are all residents and doing business in the same state, the exemption of wages is such an incident and condition of the debt from the employer that it will follow the debt, if the debt follows the person of the

garnishee into another state, and attach itself to every process of collection in any state, unless jurisdiction is obtained over the person of the principal debtor. B. & O. S. W. R. Co. v. McDonald, 1904, 112 Ill. App. 391.1

Indiana. Const. 1851, art. 1, sec. 22. "The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted". . .

Anno. St. 1901, sec. 715. Entitles householders to an exemption of \$600.

sec. 970. Wages due to non-residents from any person or corporation doing business in the state are not subject to any attachment, garnishment, or supplementary proceeding in the courts of the state.

secs. 971-72. Wages of householders are exempt from execution to an amount not exceeding \$25 at any one time. Garnishee may pay exempted wages to employee and such payment discharges garnishee from liability for the amount so paid as effectually as if paid before the summons.

sec. 2283. Sending claim out of state for collection is punishable by fine ranging from \$20 to \$50.

Personally taking claim out of the state is sending it within the meaning of this section. Wilson v. Joseph, 1886, 107 Ind. 490.

The collection of a claim in contravention of this section renders the creditor liable to the debtor. Main v. Field, 1895, 13 Ind. App. 401.

¹Compare the recent decision of the U. S. supreme court in Louisville & N. R. Co. v. Deer, 1906, 26 Sup. Ct. Rep. 207, as to jurisdiction in garnishment when the garnishee is a foreign corporation.

In construing secs. 971-72, that the wages of house-holders not exceeding \$25 shall be exempt from garnishment, with the general exemption in sec. 715 allowing to resident householders an exemption o. \$600, the latter applies to resident householders and the former to householders not resident in the state. Pomeroy v. Beach, 1897, 149 Ind. 511.

Iowa. Code, 1897, sec. 4011. Personal earnings within ninety days preceding the levy are exempt for a debtor who is the head of a family and a resident of the state.

The object of the statue being to protect the earnings of the debtor from subjection to his debts, it is not to be limited in its application to cases of attachment or execution, but is to be extended so as to afford protection against any method of subjecting such earnings to the claims of creditors. Millington v. Laurer, 1893, 89 Ia. 322.

sec. 4017. Failure to claim exemption does not waive right unless such claim is required in writing by an officer about to make levy.

sec. 4018. Sending claims out of state to defeat exemption is a misdemeanor, punishable by a fine ranging from \$10 to \$50.

sec. 3948. as amended by Acts, 1898, c. 103. Defendant in garnishment action may plead exemption and if such exemption is shown in trial of issue the garnishee is to be discharged as to that part which is not liable.

Laws, 1904, c. 124. Wages of non-resident earned outside of state and payable outside of state are exempt from attachment or garnishment by non-resident creditor on cause of action arising without state. Duty of garnishee to plead exemption unless defendant is personally served with original notice in the state.

Kansas. Const. 1861, art. 15, sec. 9. General provision for exemptions.

Gen. St. 1901, secs. 4966, 4967. Earnings for personal service for three months' time are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for family support. Debtor must notify plaintiff on filing affidavit and matter sought to be proven may be controverted.

This exemption being created for the benefit of the debtor's family cannot be waived. Burke v. Finley, 1893, 50 Kan. 424.

Laws, 1905, c. 337. Judgment for defendant does not discharge attachment or garnishment if plaintiff appeals in time and in manner prescribed by law.

Laws, 1905, c. 523. Wages earned without state and payable outside of state are exempt from attachment or garnishment in all cases where the cause of action arose out of the state unless defendant is personally served with process.

Kentucky. St. 1899, sec. 1697. For persons with a family resident in the state, wages amounting to \$40 for each member of the family are exempt in case other personal property which is exempt from execution attachment or distress is not on hand.

Laws, 1902, c. 23. Wages earned outside of state are exempt in all cases where the cause of action arose out of the state. Duty of garnishee to plead such exemption unless the defendant is actually served with process.

Louisiana. Const. 1898, art. 244-47. Makes provision for exemptions.

Rev. Laws, 1904, sec. 1696. Wages for personal services are exempt.

Wages of skilled laborers in trades are not exempt. State ex rel. I. X. L. G. Co. v. Land, 1902, 108 La. 512.

Laws, 1904, c. 165. Wages earned out of state are exempt from attachment if cause of action arose out of state. Duty of garnishee to plead exemption unless defendant is actually served with process.

Maine. Rev. St. 1903, c. 72, sec. 68 and c. 88, sec. 55. Wages for personal labor to the amount of \$20 for one month are exempt, except for necessaries furnished to debtor or his family. Wages of minor children and of women are not subject to trustee process on account of any debt of parent or of husband.

Maryland. Const. 1867, art. 3, sec. 44. "Laws shall be passed by the general assembly to protect from execution a reasonable amount of the property of the debtor". . .

Pub. Gen. Laws, 1903, art. 9, secs. 33, 34. Wages amounting to \$100 are exempt from attachment by any process whatever. Attachment on future earnings forbidden. Provisions apply to non-residents.

Massachusetts. Rev. Laws, 1902, c. 189, secs. 27, 29, 31. Wages for personal service are exempt to the amount of \$20 unless attached for necessaries for family in which case an amount not exceeding \$10 is exempt. Unlawful attachment punishable by fine not exceeding \$50 for the use of the person in-

jured. Wages of wife or children are exempt; also seamen's wages.

An employer's debt to his employee is not discharged by satisfying a judgment against himself as trustee when the sum involved is exempted under this section. Burns v. Marland mfg. co. 1860, 80 Mass. 487.

Wages collected and in the hands of an attorney at law are no longer under the protection of this statute though less than \$20 in amount. Cook v. Holbrook 1863, 88 Mass. 572.

Where wages are attached by trustee process the sum of \$10 reserved under the above section, is payable to the employee notwithstanding the pendency of the suit. Sullivan v. Hadley co. 1893, 160 Mass. 32.

Michigan. Const. 1850, art. 16. General provision for exemptions.

Comp. Laws, 1897, sec. 991, as amended by Acts, 1901, no. 172. Wages of householders to the amount of eighty per cent but in no case for more than \$30 nor less than \$8 are exempt from execution. Other employees are permitted exemptions equal to forty per cent of wages and for an amount not exceeding \$15 nor less than \$4.

A householder's family need not reside within the state to bring his wages within this statute. Pettit v. Booming co. 1889, 74 Mich. 214.

A garnishee pays over exempted wages at his peril. Crisp v. Ft. W. & E. R. co. 1894, 98 Mich. 648.

Minnesota. Const. 1857, art. 1, sec. 12. "A reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability. The amount of such exemption shall be determined by law."

Rev. Laws, 1905, sec. 4317. Wages of any person not exceeding \$25 due for services thirty days

preceding the levy are exempt. Earnings of minor children exempt unless used for their special benefit.

A creditor will not be permitted to initiate a series of garnishments and thus tie up in hands of an employer separate amounts of money and then by another proceeding in garnishment appropriate these amounts to the payment of his debt. Such proceedings are a perversion of civil process and cannot be sanctioned. Rustad v. Bishop, 1900, 80 Minn. 497.

Mississippi. Rev. Code, 1892, sec. 1963. Wages of head of family are exempt to the amount of \$100, of every other person to the amount of \$20.

A laborer cannot be made to lose the right given by this section by railure of garnishee debtor to plead exemption. Laurel v. Turner, 1902, 80 Miss. 530.

This law cannot be evaded by holding monthly balances until an aggregate exceeding \$100 is reached. The laborer has a right to his exemption at the end of each month unless his earnings exceed \$100. Chapman et al. v. Berry, 1895, 73 Miss. 437.

Missouri. Rev. St. 1899, sec. 384. Provisions for exemption of wages do not apply to non-resident defendant or one about to leave state with intent to change his domicile.

sec. 3162 as amended by Laws, 1903, p. 105. Each head of a family in lieu of other property exempt, may select and hold exempt wages not exceeding \$300 with the exception of ten per cent of the amount.

sec. 3435, as amended by Acts, 1903, p. 199. Ninety per cent of earnings for thirty days' service are exempt if employee is head of a family and a resident of state.

The continued payment by a garnishee of wages earned by his employee do not subject such garnishee to liability when wages are for services rendered within thirty days prior to payments made. Davis et al. v. Meredith et al. 1871, 48 140. 263.

Payment by a garnishee of wages properly exempt does not relieve him of his debt to his employee for such wages. Dunn v. M. P. R. co. 1891. 45 Mo. App. 29.

secs. 3447, 3448. Where sum demanded is \$200 or less and where property sought to be reached is wages due defendant from a railway corporation judgment is to proceed issue of writ of garnishment. A railroad company need not answer in any action against any person to whom it may be indebted on account of wages for personal services where a writ of garnishment was served in advance of recovery by plaintiff against defendant in any action for \$200 or less, and any officer entering such judgment shall be considered a trespasser and may be enjoined by any court having jurisdiction.

Montana. Const. 1889, art. 19, sec. 4. "The legislative assembly shall enact liberal . . . exemption laws."

Code Civ. Proc. 1895, sec. 1222, as amended by Laws, 1905, c. 8. Earnings for thirty days are exempt when shown by debtor's affidavit or otherwise that they are necessary for support of family residing within state but one-half such earnings are subject to execution, garnishment, or attachment to satisfy debts for common necessaries of life.

Nebraska. Comp. St. 1903, sec. 7099. Sixty days' wages of laborers, mechanics, and clerks who are heads of families are exempt. Provisions do not

apply to persons about to abscond or leave the state. Exemption applies whether wages are in hands of employer or of employee.

Exemption extends to non-residents. Wright v. C. B. & Q. R. co. 1886, 19 Neb. 175.

A laborer may maintain an action against a creditor to recover wages wrongfully garnished. Albrecht v. Treitschke, 1885, 17 Neb. 205.

sec. 7101. The assignment of claims to evade exemption of wages is unlawful.

One who assigns a claim contrary to the provisions of this statute is liable to the debtor for the amount so appropriated without his consent. O'Connor v. Walter, 1893, 37 Neb. 267.

Nevada. Const. 1864, art. 4, sec. 30. General provision for exemption laws.

Comp. Laws, 1899, sec. 3340. Earnings for personal services not exceeding \$50 for calendar month are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

New Hampshire. Pub. St. 1901, c. 245, sec. 20. Wages amounting to \$20 are exempt from trustee process if earned before service of writ except in action to recover for necessaries furnished to debtor's family. Wages earned subsequent to writ are exempt from process. Earnings of debtor's wife and minor children are also exempt.

New Jersey. Gen. St. 1895, p. 116, sec. 103. Wages of non-resident employees are not liable to attachment by a non-resident creditor.

An attachment in New Jersey for wages can only issue against an absconding debtor, and wages cannot be reached under Acts, 1901, c. 177 upon an execution, except upon an order that such installment of said wages as a judicial officer shall determine shall be paid from time to time. Margarum v. Moon, 1902, 63 N. J. Eq. 586.

New Mexico. Comp. Laws, 1897, sec. 1737, as amended by Laws, 1905, c. 82. Sixty days' earnings of head of a family or of a widow are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for support. Does not apply to debts incurred for manual labor or for necessaries of life.

New York. Gilbert, Code Civ. Proc. 1905, secs. 1391, 1392, 2463, 3028. Sixty days' earnings for personal services are exempt when shown by debtor's oath or otherwise that such earnings are necessary for family support. Execution against ten per cent of wages where they exceed \$12 a week is authorized for recovery for necessaries furnished or for personal services rendered to debtor.

To secure an execution against wages it must appear that the judgment was recovered wholly for necessaries sold and that no similar execution is outstanding. Neuman v. Mortimer, 1904, 98 N. Y. App. Div. 64.

North Carolina. Const. 1868, art. 10. General provision for exemptions.

Code Civ. Proc. sec. 493. Earnings for personal services within sixty days preceding order are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

North Dakota. Const. 1889, art. 17, sec. 208. "The right of the debtor to enjoy the comforts and

necessaries of life shall be recognized by wholesome laws exempting to all heads of families . . . a reasonable amount of personal property, the kind and value to be fixed by law."

Code Civ. Proc. 1899, sec. 5567. Sixty days' wages are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

Ohio. Anno. St. (3rd ed.) secs. 5430, 5441, 5483, 6489. Every person having a family and every widow may hold three months' earnings, but not more than \$150, exempt when such earnings are shown to be necessary for support. In case the claim is one for necessaries then only ninety per cent is exempt.

sec. 7014. Sending claim out of state to evade exemption laws is punishable by fine ranging from \$20 to \$50. The person whose personal earnings are so attached has right of action to recover the amount and costs either from the person transfering the claim or from the one to whom the claim is transferred or both at the option of the person bringing suit.

The sale of a claim to a non-resident is not forbidden. Goldsborough v. Bolenbaugh, 1889, 3 Ohio C. C. 583.

Oklahoma. St. 1903, secs. 2985-87, 5084. Ninety days' earnings for personal or professional services on part of the head of a family residing in territory are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for

family support. Current wages are exempt for persons not heads of families.

To constitute a head of a family requires a condition of dependence on part of others whom one is under legal or moral obligations to support. An unmarried man supporting a dependent mother and sister is the head of a family within this section. Rolater v. King, 1903, 13 Okla. 37.

Oregon. Anno Codes and St. 1902, c. 2, t. 3, sec. 228, as amended by Laws, 1903, p. 26, and by Laws, 1905, c. 220. Thirty days' earnings not exceeding \$75 are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for family support; except that fifty per cent of such earnings are subject to attachment, execution, or garnishment, if debt was incurred for family expenses furnished within six months of service of process.

Pennsylvania. Dig. 1894, p. 834, sec. 40. Unlawful to send claims for debts outside of state with purpose of evading exemption laws. The assignor is made liable to the person or persons from whom any such claim has been collected by attachment or otherwise.

p. 836, sec. 49 and p. 2077, sec. 25, 26, as amended by Laws, 1905, no. 99. Wages of laborers or salaries of persons in public or private employment are not liable to attachment in hands of employer, except that wages due or owing may be attached for debts for board for a period not exceeding four weeks.

Includes non-resident laborers. Billin v. Froment, 1887, 3 Pa. Co. C. 450.

Rhode Island. Gen. Laws, 1896, c. 255, sec. 5, as amended by Pub. Laws, 1900-01, c. 751 and 841. Exemptions include: wages due or accruing to seamen; salary or wages due or payable to any debtor not exceeding the sum of \$10, except for necessaries furnished defendant in which case adjustment is left to the discretion of the court; also the salary and wages of wife and of minor children.

South Carolina. Const. 1895, art. 3, sec. 28. General provision for exemptions.

Code Civ. Proc. 1902, sec. 317. Sixty days' earnings for personal services are exempt when shown by debtor's affidavit or otherwise to be necesary for family support.

South Dakota. Const. 1889, art. 21, sec. 4. "The right of the debtor to enjoy the comforts and necessaries of life shall be recognized by wholesome laws, exempting a reasonable amount of personal property the kind and value of which is to be fixed by general law."

sec. 5. Earnings of a married woman are not liable for debts of husband.

Code. Civ. Proc. 1903, sec. 403. Sixty days' wages for personal services are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

Justices Code, 1903, sec. 41. In attachment suits brought against non-residents for wages earned and payable outside the state the exemption law of state of residence controls.

Tennessee. Const. 1870, art. 11, sec. 11. General provision for exemptions.

Laws, 1871, c. 71 as amended by Laws, 1905, c. 376. Exempts ninety per cent of wages or salary amounting to \$40 or less per month, and \$36 for persons earning in excess of \$40. Applies to the income of every resident of the state who is eighteen years of age or upward, or who is the head of a family. No attachment or garnishment is to be issued for future wages or salary.

Applies only to wages actually due and not to all wages earned. Pay day cannot be anticipated by a writ of garnishment. Weaver v. Hill, 1896, 97 Tenn. 402.

Laws, 1903, c. 21 and 453. Unless written assent of employer was given to assignment, he is not to be charged for any assignment of unearned wages or salary made by any employe.

Laws, 1903, c. 590. Wages earned and payable without the state are exempt where cause of action arose without the state. Duty of garnishee to plead exemption unless defendant is actually served with process.

Texas. Const. 1876, art. 16. sec. 28. No current wages for personal services shall ever be subject to garnishment.

Wages past due, left with employer, because employee can not collect from him, continue to be current wages. Davidson v. Chair co. 1897, 41 S. W. (Tex. Civ. App.) 824.

Utah. Rev. St. 1898, secs. 3243, 3245, as amended by Laws, 1901, c. 31, and Laws, 1905, c. 37. Minor's earnings are exempt for debts not contracted for his

special benefit. One-half the earnings of the head of a family for personal services rendered within thirty days preceding the levy are exempt from execution when shown by the debtor's affidavit that such earnings are necessary for support of his family residing in the state. When the earnings are \$2 a day or less the exemption is \$30 per month and in no case is the debtor to be taxed with the costs of proceeding. Requires the payment of a \$2 fee by the plaintiff to the garnishee before answer can be required in garnishment proceedings.

Vermont. St. 1894, c. 69, sec. 1312, as amended by Laws, 1896, no. 31, and Laws, 1905, no. 62. Wages for labor performed after the service of trustee process are exempt. Wages of a minor are not liable for debts of parent nor of a married woman for debts of husband. For non-residents exemption law of state of residence controls.

Virginia. Const. 1902, art. 14, secs. 190-94. General provision for exemptions.

Code, 1904, sec. 3652. Wages not exceeding \$50 per month owing to a laboring man being a house-holder are exempt from distress, levy, or garnishment.

This exemption cannot be waived. Crump v. Com. 1882. 75 Va. 922.

The term "laboring man" includes all householders who receive wages for their services. Mahoney v. James, 1897, 94 Va. 178.

sec. 3652a. Sending claim for debt out of state in order to evade exemption laws is unlawful.

sec. 3652c. Wages of minors are not liable for debts of parents.

sec. 3656. An injunction may be awarded to prevent garnishment of exempt wages.

Washington. Const. 1889, art. 19. Provides that the legislature shall enact exemption laws in favor of all heads of families.

Code, 1901, sec. 565. Current wages for personal services amounting to \$100 are exempt for any person having a family to support, if garnishment is for debt for actual necessaries no exemption in excess of \$10 per week for four consecutive weeks is allowed.

West Virginia. Const. 1872, art. 6, sec. 48. General provision for exemptions.

Code, 1899, c. 41, sec. 29a. Assigning claims for collection outside of state in order to evade exemption laws is unlawful.

c. 66, sec. 12. Earnings of a married woman are not subject to garnishment for husband's debt but are liable for her own debts.

Wisconsin. Const. art. 1, sec. 17. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted.

Rev. St. 1898, sec. 2982. Three months' earnings not to exceed the amount of \$60 for each month or

\$180 in all, are exempt for any person having a family dependent for support. Earnings of minor children are included. The garnishee shall recover costs when the debt or property sought to be reached is exempt from execution against the principal debtor at the time of serving the process on the garnishee.

In garnishment proceedings the burden is on plaintiff to prove the allegation of the garnishment affidavit that the indebtedness is not exempt. Eastlund v. Armstrong, 1903, 117 Wis. 394.

sec. 3723-3723b as amended by Laws, 1901, c. 280. Garnishee may plead exemption but is in no manner to be held liable to defendant or to any other person for failure to set up such exemption.

sec. 4438f. Any person, with the intent of depriving any bona fide resident of the state of exemption rights, assigning any claim for the purpose of having the same collected out of the earnings of a debtor or of his minor children in the courts of another state when the parties are all within the jurisdiction of the courts of the state is punishable by fine of not less than \$10 nor more than \$50 for each offense.

Laws, 1905, c. 148. Assignment of wages exempt from garnishment by married man is invalid unless signed by wife. Such assignment not valid for more than two months.

c. 226. The earnings of a minor are not liable for the debts of a parent who by reason of abandonment, drunkenness, or profligacy neglects to provide for the support or education of such minor. Wyoming. Rev. St. 1899, secs. 2516-19. Any person making an assignment of debts in order to evade exemption laws is liable to the party injured for the amount so transferred, with all costs and expenses and a reasonable attorney's fee and is further liable by prosecution for a fine not exceeding \$100 and costs.

sec. 3951, as amended by Acts, 1903, c. 31. One-half the earnings for personal services rendered within sixty days preceding the levy are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for support of his family residing within the state.

CONSTRUCTION

Exemption statutes by an almost universal rule have been liberally construed. However, exceptions to the general rule of interpretation are found especially in the earlier decisions.¹

The general attitude of the courts is shown in the following decisions:²

Massachusetts. "The [exemption] statute is humane and beneficial in its purpose and operation and fairly entitled to as liberal a construction as can be given it consistently with its true and just interpretation." Pond v. Kimball, 1869, 101 Mass. 105.

Wisconsin. "This court has uniformly held that the exemption laws must have a liberal construction so as to secure their full benefit to the debtor." Below v. Robbins, 1890, 76 Wis. 600.

¹ For an example of strict construction see Rue v. Alter, 1847, 5 Den. (N. Y.) 119.

² For further illustrations of liberal construction, see Good v. Fogg, 1871, 61 Ill. 449; Hutchinson v. Whitmore, 1892, 90 Mich. 255; Rustad v. Bishop, 1900, 80 Minn. 497.

Iowa. "Exemption statutes are the product of an enlightened public policy which seeks to afford some measure of protection to the family of an unfortunate debtor as well as to the debtor himself and incidentally to the public and are always to be liberally construed to effect their intent and purpose." Cook v. Allee, 1903, 119 Ia. 226.







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MUNICIPAL ELECTRIC LIGHTING

ERNEST BRADFORD SMITH

MADISON WISCONSIN APAIL 170

INTRODUCTION

This department is in constant receipt of letters from city officials and members of the legislature relating to municipal electric lighting. It is often asked: "What cities have municipal plants?" "How many exist in Wisconsin?" "How many exist in America?" etc.

This pamphlet has been compiled with the idea of answering these questions. The statistics, although not complete, have been gathered from every available source. A bulletin will soon be issued upon gas plants.

CHARLES McCARTHY
Legislative Reference Department

MUNICIPAL ELECTRIC LIGHTING

ERNEST BRADFORD SMITH

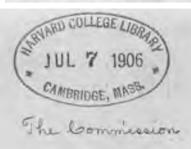
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CONTENTS

	Page.
REFERENCES	. 3
UNITED STATES:-	
Increase in municipal plants	. 4
Consolidation	. 7
Changes from municipal to private ownership	. 7
Changes from private to municipal ownership	. 8
In small cities	. 12
In cities over 10,000	. 13
Street and commercial lightning	. 15
Investment and income	. 16
FOREIGN COUNTRIES:-	
Canada	. 19
England	. 19
WISCONSIN:-	
Increase in municipal plants	. 21
Cities and villages having municipal plants	

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 Compiled by M. N. Baker, associate editor of Engineering news, New York. Covers up to 1902: gives figures only for cities above 3,000 population.
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 Gives figures for 1903 for cities over 25,000.
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 Bulletin, no. 62, Jan. 1906, p. 1-123.
 Full discussion. Favorable to municipal ownership.
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 Based on reports from 632 out of a total of 2,572 private plants and 320 out of 460 municipal plants, 1808-09. No figures for places of less than 1,000 population.

UNITED STATES

Increase in municipal plants

The electric lighting business began in the United States about 1880; in Wisconsin, in 1884. Since that time there has been a great increase in both the number and size of electric light plants. The following table shows the development of both private and municipal plants since 1881:

GROWTH IN UNITED STATES OF MUNICIPAL AND PRIVATE ELECTRIC LIGHT PLANTS! (table 1)

Year	Municipal	Private	Total no.	Per cent of municipal plants
1881	1 16 137 386	7 151 872 1690	8 167 \$1009 2076	9.5 13.5 18.5
1900	710 815 988	2514 2805 3076	3224 3620 4064	22.02 22.5 24.3
1906 (Mar.)	€1050	3234	4284	24.4

¹Figures for 1881 to 1902 from U. S. Census office, Special report on central electric light and power stations, 1902. p. 106.

²Figures for 1905 and 1906 from Central station lists, Sept. 1905 and Mar. 1906.

From this table it will be observed that the total number of electric light plants has grown from 8 in 1881 to 4284 in March, 1906; of plants owned by companies, partnerships and individuals, there were 7 in 1881 and 3234 in 1906; of plants owned by cities, villages or other municipal corporations, there was 1 in 1881 and 1050 in 1906. The number of municipal plants in 1885 was nearly 10 per cent of the total number; in 1895, 18½ per cent; in September, 1905, somewhat more than 24 per cent; a proportion slightly increased for March, 1906.

Carroll D. Wright reports the figures for 1899 as 460 municipal and 2,572 private plants; total, 3032. The Census bureau report for 1902 gives 815 municipal plants and 2805 private; total, 3,620.

The municipal year book, 1902, gives for cities of over 3,000 population, a total of 1,471 electric light plants, of which 278 were municipal. Central station list, 1905, gives engineering and commercial data for 984 towns in which 988 municipally owned electric light plants exist: 2.932 towns in which 3076 plants were owned by private concerns; a total of 4,064 electric light plants in the United States in September, 1905. Six months later, March, 1906, there were 62 more municipal plants and 158 more private plants. This does not include companies furnishing power only, or mill plants lighting a local mill or factory. In the above municipal list are included five plants owned by colleges or universities and supplying light to outside consumers; and a few plants owned by cities and leased to private companies for operation.

The number of electric light plants by states is as follows:

ELECTRIC LIGHT STATIONS BY STATES — MUNICIPAL AND PRIVATE. 1906¹ (table 2)

	Municipal plants	Towns where private plants exist	Private plants
Mabama	18	25	28
rizoua.	0	16	17
rkansas	8	42	43
Catifornia	13	95	106
olorado	2	58	58
Connecticut	6	38	38
Delaware	6	4	4
Plorida	10	25	26
leorgia	39	42	42
daho	9	27	28
Ilinois	92	271	281
ndiana	64	116	124
owa	51	138	141
ndian territory	0	26	26
Cansas	17	62	65
Centucky	13	64	64
ouisiana	14	20	20
daige	3	57	63
daryland	5	28	29
lassachusets	23	93	95
dichigan.	104	127	132
finnesota	82	65	67
dississippi	28	31	35
dissouri	51	78	88
dontana	1	24	27
Nebraska	14	57	59
Vevada	0	8	8
New Hampshire	3	45	48
New Jersey	4	79	81
New Mexico	0	13	13
New York	35	224	241
North Carolina	24	32	34
North Dakota	8	18	18
Ohio	101	153	165
klahoma territory	5	10	10
Oregon	10	48	48
ennsylvania	39	234	253
Shode Island	1	10	10
South Carolina	14	27	28
South Dakota	9	25	26
Cennessee	26	38	38
exas	9	170	174
Jtah	6	18	19
ermont	12	39	39
irginia	16	37	38
Washington	11	54 1	58
West Virginia	6	41	42
Wisconsin	46	120	123
Nyoming	U	16	16
A STATE OF THE PARTY OF THE PAR			
Total in U.S	1.050	3.080	3,234

¹ These figures compiled from Central station list, March, 1906

It is difficult to keep any list of municipal plants up to date, because new plants are added so rapidly. During the months from June to December, 1905, in the pages of the Municipal journal and engineer and in Municipal engineering were given the names of over forty cities which had just installed or voted to install municipal electric light plants; while in as many more, the clerk, or mayor, or a committee of the council was investigating the subject.

Consolidation

Simultaneously with the increase in the number of electric plants, has come a consolidation of plants, the absorption of several small companies into one large concern, and the lighting of many small towns from one large central plant, a matter of common observation. At the same time, there is shown a tendency to combine electric, with gas and water works. The Census bulletin for 1902 reports 1,465 central stations out of 3,620, 40 per cent, which were run in connection with water works, gas plants, ice manufactories, etc.

Changes from municipal to private ownership

Between 1881 and 1902, 13 plants had changed from municipal to private ownership.¹ The following electric light stations began operations as municipal plants, but have since passed into private ownership:

¹I^r. S. Census office. Special report on central electric light and power stations, 1902, p. 8.

CITIES WHICH HAVE CHANGED FROM MUNICIPAL TO PRIVATE OWNER-SHIP (table 3)

	City	Popula- tion	Name of company
Alabama	Troy	4,097	City Electric Light and Water Plant Co.
Indiana	Bourbon	1,187	Union Water, Light and Power
Iowa Minnesota		1,866 886	Andubon Electric Plant. Electric Light Plant and Water Works.
New York	Waddington.		Waddington Electric Light
Ohio	Xenia	8,696	Peoples Gas and Electric Light
Pennsylvania	Lehighton 1	4,629	Lehighton Electric Light and Power Station.
Texas	Honey Grove	2,483	Hotey Grove Light and Power Plant.
Whatata	Itasca	1,277	Hockoday Brothers.
Virginia	Euena Vista.	2,388	Buena Vista Light and Power Co.
Washington	Wytheville Vancouver	3,003 3,126	Brown Electric Co. City of Vancouver Electric Light Plant Co.
	Chehalis1	1,775	Chehalis Electric Light Plant.

Given as municipal, 1905, by Central station list, Sept. 1905.

Changes from private to municipal ownership

Of the 815 municipal plants in 1902, 645 were started as municipal plants, and 170 had been changed from private to public ownership. The municipal plants in the following cities and towns began operations under the ownership of individuals, firms or corporations:



MUNICIPAL ELECTRIC LIGHTING

CITIES WHICH HAVE CHANGED FROM PRIVATE TO MUNICIPAL OWNERSHIP (1881-1902) (table 4)2

	1	
	اما	Pop. 1900
Arkansas	Conway	2,003
California	Modesto 1	16,464 2,024
Colorado		705
Delaware	Milford	2,500
	Newark	1,213
Florida	Fernaudina	3,245
	Kissimmee	1,132
	Ocala	3, 380
Georgia	Albany	4,508
•	Athens 1	10, 245
	Gainsville	1,234 4,382
	Griffin	6.857
	Moultrie	2,220
	Washington	3.300
Illinois	Chadwick	505
	Farmer City	1,664
	Flora	2,311
	Girard	1,661
	Hampshire	760 1.970
	Highland Kansas	1,049
	La Grange	3,969
•	Lockport	2.659
	Peru	6,863
	Princeton	4,023
	Rantoul	1,207
	Shelbyville	3,546
	Toledo	818 2,J14
	Waterloo	2.345
Indiana	Anderson	20,178
	Ashley	1,040
	Attica	3,005
	Bluffton	4,479
	Cambridge	1.754
	Dunkirk ¹	3,187
	East Chicago	3,411 3,910
	Goshen	7.810
	Greenfield	4.489
	Hobart	1,390
	Kendaliville	3,354
	Knightstown	1,942
	Linton	3,071
	Lowell ¹	1,275 757
	Mishawaka	5,560
	Montpelier	3,405
}	Napanee	2,208
	Peru	8,463
	Portland	4, 798
1	Rockville	2,045
J	Reusselaer	2,255
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¹ Seven plants given as private by Central station list, Sept. 1905.

² Authority, U. S. Census office, 1906.

CITIES WHICH HAVE CHANGED FROM PRIVATE TO MUNICIPAL OWNERSHIP (1881-1902)—continued

		Pop. 1900
Indiana	Thorntown	1.511
	Williamsport	1,245
	Winamac	1.684
	Jonesboro	1,838
Iowa	Algona	2.911
10wa	Bloomfield	2,105
		4,689
	Fairfield	
	Mount Pleasant	4,109
	Newton	3,682
	Spencer	3,095 -
	Spirit Lake	1,218
Kansas	Emporia	8,223
	Enterprise	1,200
	O-age City	2,792
	Seneca	1,846
Kantuake		2,591
Kentucky		2,692
Louisiana	Franklin	
Maryland	Laurel	2,079
Massachusetts	Belmont	2,117
	Hincham	5,059
	Hudson	5,454
	Hull	1,703
	Middleboro	6.8-5
	Taunton	31,026
Michigan	Badaxe	1,241
attenigan		2,079
	Charlevoix,	
	Chelsaa	1,635
	Cold Water	6,216
	Crosswell	606
	Dowagiac	4,151
	Escanaba	9,549
	Hillsdale	4,151
	Jonesville	1,367
	Laosing	19,485
		1.828
	Mason	777
	Mendon	
	Monroe	5,043
	Niles	4,287
	Petosker	5,285
	Sturgis	2,465
	Union City	1,514
	Vassar	1,832
Minnesota	Alexandria	2,681
Minnesora	Argyle	829
		5,474
	Austin	
	Blue Earth	2,900
	Brainerd	7,524
	Hibbing	2,481
	Kasson,	1,112
	Long Prairie	1,385
	New Prague	1,228
	Tower	1,366
	Wadena	1,520
Winterland		1,773
Mississippi	Clarksdale	4,383
	Fulton	

MUNICIPAL ELECTRIC LIGHTING

CITIES WHICH HAVE CHANGED FROM PRIVATE TO MUNICIPAL OWNERSHIP (1881-1902)—continued

		Pop. 19
Minimal .	f. baren	2,125
dissouri	Lebanon	2,511
	Pierce City	
	Rolla	1,600
	Slater	2,502
Iontana	Miles City	1,938
ebraska	Pawnee	1,969
lew York	Frankfort	2,664
	Greenport	2,366
		14.321
T	Watervliet	5.877
orth Carolina	Goldsboro	
	Morgantown	1,938
	Reidsville	3, 262
orth Dakota.	Grafton	2,378
hio	Bradford	1,254
	Brerea.	2,510
	Beverly	712
	Columbus Grove	1.935
	Conditions Grove	3,979
	Greenfield	
	Minerva	1,200
	Painesville	5,02
	Plymouth	1,15
	Troy	5,881
	Wellston	8.045
klahoma	Stillwater	2,431
	Ulliabore	980
regon	Hillsboro	1.79
	Medford	
	Seio	340
ennsylvania	Aspinwall	1,231
	Millvale	6,786
	Tarentum	5,473
outh Carolina	Dillon	1,01
outh Dakota	Brookings	2,340
Outh Dancia	Discountings	2,300
	Pierre	10.01
	Redfield	
ennessee	Harriman	3,443
	l ebanon	1,95
	Morristown	2,97
	Newbern1	1,423
exas	Sherman	10,24
tah	Payson	2.63
ermont	Hardwick	1,33
	Dadford Cian	2,41
irginia	Bedford City	
	Front Royal	1,00
•	Farmville	2, 47
	Salem	3, 41
ashington	Centialia	1,60
	Ellensburg	1,73
	Kent	75
		2,32
	Port Augeles	1.30
	Pullman	
 .	Tacoma	37,714
Visconsin	Bayfield	1,689
	Cedarburg	1,626

¹ Seven plants given as privat) by Central station list, Sept., 1905.

CITIES WHICH HAVE CHANGED FROM PRIVATE TO MUNICIPAL OWNERSHIP (1881-1902)—continued

Wisconsin	Fort Atkinson	Pop. 1900, 3,043 2,584
	New Richmond	1,631 2,880 2,237
~	Two Rivers	3,784

In small cities

The great majority of all the electric light plants, private as well as municipal, are located in small cities.

Of a total of 3,620 plants in 1902, 2,714 were in cities of less than 5,000 population; of the 2845 private plants, 2,043 or 72 per cent; and of the 815 municipal plants, 671 or 82 per cent were in cities of less than 5,000. In 1899, in places of less than 1,000 population, there were located 9 per cent of the 2572 private plants and 9 per cent of the 560 municipal plants. In 1906, this number had increased to about 15½ per cent for municipal plants, and more than 19 per cent for private plants, as shown by the following table, compiled from the Central station list for March, 1906:

PRIVATE AND MUNICIPAL PLANTS IN SMALL AND LARGE CITIES (table 5)

	Municipal plants	Per cent.	Private plants	Per cent.
Villages of less than 1,000 population. Towns of 1,000-10,000 popula-	440	15.4	592	19.3
tion Cities of over 10,000 population	808	77.6 7.0	2,160 328	70.1 10.6
Total number of places	1,041	100	3,0801	100

¹Some cities have two or more private plants, making the total number of private plants 3,284, while the total number of cities and villages having private plants is 3,080.

It is evident from these figures, that the towns of less than 1,000 inhabitants have a little larger proportion of private plants. But the strength of the municipal ownership movement is in the cities of from 1,000 to 10,000 population, 77.6 per cent of all places having municipal plants being included in these limits. Seven per cent of all the places having municipal plants were of more than 10,000 population, against 10 per cent for private plants. In seventy cities there were in 1905, both a municipal and one or more private plants.

In cities over 10,000

The following table gives the list of cities of over 10,000 population, which have municipal electric light plants (1906):

CITIES OF OVER 10 000 POPULATION CONTAINING MUNICIPAL ELECTRIC LIGHT PLANTS—BY STATES (table 6)

		Pop. 1900
Arkansas	Little Rock	38,300
California	Alameda	17,350
Connecticut	New Britain	26,000
	Norwich	17,250
Florida	Jacksonville	28,400
Illinois	Aurora	24,000
	Bloomington	23,000
	Chicago (4 plants)	1,700,000
	Decatur	20,700
	Elgin	22,400
	Jacksonville	15,000
	La Salle	10,000
	Galesburg	18,600
Indiana	Anderson	20,000
Indiana		12,400
	Hammond	
	Huntington	19,500
	Logansport	16,200
	Marion	17,300
	Mancie.	21,000
	Richmond	18, 200
****	Indianapolis	170,000
Iowa	Marshalltown	11,000
Kansas	Topeka	33,700
Kentucky	Henderson	10,200
	Owensboro	13,200
	Paducah	19,400
Maine	Bangor	21,850
	Lewiston	23,760
Maryland	Cumberland	17,100
And the second s	Hagerstown	13,600
Massachusetts	Chicopee	19,170
	Holyoke	45,700
	Prabody	12,000
	Taunton	31,000
20, 17%	Westfield	10,000
Michigan	Bay City	27,600
	Detroit	285,000
y y	Grand Rapids	87,500
	Kalamazoo	24,400
	Lausing	19,500
	Marquette	10,050
	West Bay City.	13,120
Missouri	Hannibal	12,800
	Joplin	26,000
	St. Joseph	103,000
Charles and the Control of the Contr	St. Louis	575,200
Nebraska	Lincoln	40,100
New York	Dunkirk	11,600
	Jamestown	23,000
3.4	Watervliet	14,300
Ohio	Ashtabula	13,000
	Columbus	125, 560
	Hamilton	23,000
	Marietta	13,350
	Newark	18,150

CITIES OF OVER 10,000 POPULATION CONTAINING MUNICIPAL ELECTRIC LIGHT PLANTS—BY STATES—continued

		Pop. 1900
Pennsylvania	. Allegheny	130,000
•	Chambersburg	10,000
	Easton	25,200
	Meadville	10.200
	Norristown	22,200
South Dakota	. Sioux Falls	10,260
Tennessee		
100008866		80,865
en .	Jackson	14,500
Texas	Austin	22, 250
	Fort Worth	27,700
	Galveston	37, 800
	Sherman	10,240
Vermont	. Burlington	18,640
Virginia	. Alexandria	14,500
,	Danville	16,500
Washington	. Seattle	80,670
	Tacoma	37,700
West Virginia	. Wheeling	38,880

Total, 73 plants. (Population given in round numbers, from the census figures for 1900)

The following states contain no cities of over 10,000 population having municipal electric light plants. Alabama, Arizona, Colorado, Delaware, Georgia, Idaho, Indian Territory, Louisiana, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, Utah, Wisconsin and Wyoming.

Street and commercial lighting

City plants are furnishing commercial as well as street lighting. From the following table it is seen that one-half of the municipal stations in 1902 furnished commercial arc lighting while more than seven-eighths furnished commercial incandescent lighting; four-sevenths of the private plants furnished commercial arc lighting and practically all (fifty-five-fifty-sixths) furnished commercial incandescent lighting. In 1902 all but 77 of the 815

municipal plants sold current to private consumers. (The total number of private stations was 2805, and of municipal stations 815):

CHARACTER OF SERVICE (1902) (table 7)1

	Private stations	Municipal stations	Total.
Arc lighting Commercial or other private Public (street, etc.)	1,667 1,810	353 712	2,020 2,522
Incandescent: Commercial or other private Public	2,752 1,889	732 602	3,484 2,491
Motor power—stationary Electric Ry	975 157	118	1,093 159
All other service	152	9	161

t 'U.S. Census office. Report on central electric light and power stations, 1902 p. 11.

Investment, income and prices

The amount invested in private Investment. plants has been and is much greater than that in muncipal plants. The figures given for 1899 by Carroll D. Wright were in round numbers, \$265,-182,000 invested in private electric light plants, compared with \$12,902,000 in municipal plants; the value of the electricity sold, was, for private plants. \$56,490,000 and for municipal plants, \$3,531,000. That is, the investment in municipal plants in 1899 was about one-twentieth of the investment in private plants, while the product was a little less than one-seventeenth. In 1902, the Census bureau reported an investment (cost of construction and equipment) of \$482,700,000 in round numbers for private plants, and \$22,000,000 for

municipal plants; with a gross income of \$78,700,000 for private and \$6,965,000 for municipal plants. That is, in 1902 the amount invested in municipal plants was still about one-twentieth while the value of the product was about one-eleventh.

INCOME (ROUND NUMBERS) 1902 (table 8)1

	Private stations	Municipal stations
From arc lighting. From incandescent From all other electric service From all other sources	\$22,091,000 41,336,000 13,960,000 1,585,000	\$3,389,000 3,360,000 88,000 128,000

 $^{^{1}\}mathrm{U.~S.}$ Census office. Special report on central electric light and power stations, 1902, p. 110.

Private stations receive more from incandescent than from arc lighting; municipal stations from each about the same. "All other electric service" is current for the operation of stationary and railway motors.

The next table is a comparison of the public or street lighting with the commercial (store or house) lighting:

NUMBER OF LAMPS IN SERVICE, TOTAL INCOME, AND AVERAGE INCOME
PER LAMP, 1902 (table 9 1

	ARC L	AMPS	INCANDESCENT LAMPS						
	Commercial or other. private service	Public service	Commercial or other private service	Public service					
Privata stations: Number of lamps Total income	168,180 \$8,220,154	166,723 \$13,871,646	16,243,853 \$39,039,927	372,740					
Average income per lamp Municipal stations:	\$48.88	\$83.20	\$2.40	\$2,257,927					
Number of lamps Total income	5,798 \$240,166	45,002 2\$3,149,079	1,494,531 \$2,868,296	82,920 \$491,322					
Average income per	\$41.46	\$69.98	\$1.92	\$5.90					

 ¹U. S. Census office. Special report on central electric light and power stations, 1902, p. 29.
 ²Value estimated according to prevailing rates.

A careful perusal of these figures discloses the fact that private stations furnish a few more commercial arcs than public (street) arcs; while municipal stations furnish eight times as many public arcs as commercial arcs. Incandescent lighting, both by private and by municipal plants, is overwhelmingly commercial; but private stations furnish one-fortythird as many street incandescents as store and house incandescents, while municipal plants furnish one-eighteenth.

Street arcs pay private as well as municipal plants much more per arc than commercial arcs; the same is true of incandescent service.

FOREIGN COUNTRIES

Canada

There are 80 municipal electric light plants in Canada.¹ They are located in the provinces as follows:

British Columbia Manitoba																	٠.					
New Brunswick N. W. Territories	•••	•••	• • •	•••	••	• •	••	٠.	٠.	• •	•	•	• •	• •	•	٠.	•	• •	•	• •	٠.	_
Nova Scotia Ontario											_		_				_					
Prince Edward Island Quebec																						
Total in Canada.																						_

Most of the cities have a population of less than 10,000 except St. Thomas, Guelph, Glace Bay and Kingston.

England

In England, about two thirds of the electric light plants are owned by municipalities. The following table shows at a glance the comparative situation of water, gas and electric plants. The figures are in most cases for 1903; Scotland and Ireland are not included:

MUNICIPAL ELECTRIC LIGHTING

	PUBLI	C PLANTS	PRIVAT	TE PLANTS				
	No.	Total	No.	Total				
	Plants	Capital	Plants	Capital				
Water	1,045	\$330,914,000	251	\$197,851,000				
	256	173,919,000	454	375,348,000				
	334	155,728,000	174	133,828,000				
	142	119,061,000	154	83,660,000				
Total	1,777	8779,622,500	1,033	8790, 688, 724				

U. S. Labor bureau. Bulletin, Jan. 1906, p. 5.

There are 481 municipal electric plants and 297 private electric plants in the whole United Kingdom.¹ Liverpool, Leeds, Sheffield, Birmingham, Southampton and Glasgow are some of the larger cities in the list. Municipal ownership has found much favor with the citizens of England, Scotland and Ireland.

¹ Municipal yearbook of the United Kingdom, 1906, p. 429.

WISCONSIN

In Wisconsin, municipal electric lighting began in 1889, at which time there were 30 private plants. Since then the growth has been as follows:

GROWTH OF MUNICIPAL BLECTRIC LIGHT PLANTS IN WISCONSIN (table 11)1

Year	No. of new	Total	Total
	municipal	municipal	private
	plants	plants	plants
889890	1 1	1 2	30 34
892	$\frac{2}{2}$	6 8	47 52 65
895	1	9	69
897	3	12	88
898	2	14	102
899	3	17	108
900	4	21	112
901 902 903	3 4 4	24 28	115 124
904	4	40	115
	6	46	123

U. S. Census office. Special report on central electric light and power stations, 1902. p. 106.
 Central station list, Sept. 1905 and Mar. 1906.

There are in Wisconsin (March, 1906) 123 private and 46 municipal electric light plants; 38 of the 123 private plants and 13 of the 46 municipal

plants are in places of less than one thousand population.

Cities and villages having municipal plants

The cities and villages in Wisconsin that have municipal electric light plants are as follows:

MUNICIPAL ELECTRIC LIGHT PLANTS IN WISCONSIN (table 12)

City or Village.	Pop. 1905	Date begun operation	Cost of plant	No. of arcs	No. of in- candescent lamps
Algoma	2.010	1903	\$40,000	24	1.200
Arcadia	1,315	**********	21,000	- 8	1,500
Barron	1,675	1902	15,000	18	1,400
Bayfield ¹	2,675	1889	15,000	20	3,000
Black River Falls	1.945		12,000	10	1,500
Blair.	461	1905		6	600
Blanchardville	640	1903	6,000	8	450
Boscobel	1,635	1899	18,006	3	2,600
Uedarburg	1,680	1905		********	
Clintonville	1,840	1902	12,000	22	2,000
Colby	850	1903	16,000	15	450
Columbus1	2,388		20,000	54	4,800
Cumberland	1,495				
Eikhorn	1,820		17,500	40	2,300
Elroy	2,011				
Evansville	1,960		16,000	11	1,100
Fennimore	1,053	1904	23,000	21	300
Florence	1,940	*** ******	8,000		1,500
Fort Atkinson ¹	3,390	1890	35,000	34	4,000
Grantsburg	612	1905	**** ******	4	900
Greenwood	687	1906	* *****		
Independence	663	1906			
Hudson ² ,	3,220	**********		92	8,000
Jefferson	2,572	**********	27,000		2,500
Kilbourn	1,090	**********	15,000	20	600
Marshfield	6,036	******	********	60	7,000
Mazomanie ¹	860	1894	12,000	**** ****	600
Monticello	610	1904	8,000		
New Glarus	655	*** *****	14,000	8	500
New London'	3,000	1905	20,000	51	4,000
Oconomowoe ¹		1891	42,000	50	6,000
Plymouth1	2,675	1902	70,000	67	4,700
Princeton		1905	13,000	29	1,100
Reedsburg ¹	2,575	***********	17,000	25	9,000
Rice Lake	3,410	1892	40,000	27	1,700
Richland Center	2,635	***********	25,000	*******	2,000
River Falls		1900	35,000	36	8,000
Sauk City	750	1903	9,000	8	450
Shawano		1001	30,000	30	1,500
Spring Green		1904	6,000	5	730
Stoughton1	4,240	1904	25,000	23	3,000
Sturgeon Bay		1001	19,000	43	1,800
Thorp	875	1901	10,000		800
Two Rivers1		1902	70,000	58	4,100
Waupun	3,110	1900	20,000	46	4,500
Whitehall	700	1898		8	1,000

Operated with water works, Leased to a private company,







INTRODUCTION

In the light of the recent agitation in New York over trust company reserves, and of the doubts expressed as to the meaning of the Wisconsin trust company law, this bulletin containing a summary of all the laws relating to trust company reserves will be found suggestive and useful to business men and legislators.

CHARLES McCartny, Legislative Reference Department

MARGARET A. SCHAFFNER

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	Page.
REFERENCES	3
KINDS OF DEPOSITS	. 5
FIDUCIARY DEPOSITS	5
GENERAL BANKING DEPOSITS	. 6
Pemand deposits	6
Time deposits	. 7
Aggregate deposits	8
Ratio of reserve to deposits	. 8
WHAT CONSTITUTES BANKING	. 8
REGULATIONS	. 10
F reign countries	. 10
United States	. 11
MAINTENANCE OF THE RESERVE	21
PROVISIONS REQUIRING MAINTENANCE OF RESERVE	21
Statut: ry requirement.	. 21
i.egulations of state departments	. 21
Limitatious in charters	22
PENALTIES FOR IMPAIRMENT	. 22
Suspension of loans and discounts	. 22
Prohibition of dividends	. 23
Tax on impairment of reserves	. 23
Declaration of insolvency	. 24

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Contains addresses by bankers and trust company officials which give valuable data on trust companies.

CATOR, GEORGE. Trust companies in the United States. Baltimore, 1902. Johns Hopkins university. Studies in historical and political science. ser. 20, nos. 5-6.

Valuable historical and critical data. Also gives tabular statement of reserves required by law in the several states and territories in 1901, p. 92-3.

GILMAN, THEODORE. Trust company reserves; argument submitted to the committee on banks, assembly chamber, Albany, New York, Mar. 1, 1904. Bankers' magazine, Apr. 1904. vol. 68, p. 518-23.

Proposal to tax impairment of reserves.

HERRICK, CLAY. Trust companies; their organization, growth and management. Bankers' magazine, Jan.-Oct. 1904. vols. 68-69.

A series of articles appearing each month. Gives a comparative table showing reserves required of trust companies and banks in certain states of the United States in 1904, vol. 69, p. 440.

KIRKERIDE. F. B. & STERRETT, J. E. Modern trust company: its functions and organization. New York, 1905.

One of the best texts on trust companies. Includes bibliography, p. 291-5.

Nessitt, Robert C. Trust companies. Law society, London. Proceedings of the 29th provincial meeting. London, 1903, p. 234-64.

A description of the trustee companies of Australia, Public trust office of New Zealand, and the position of English companies or individuals analogous to these.

PHILLIPS, C. F. The business in foreign countries analogous to that of trust companies in the United States. American bankers' association—Trust company section. 5th annual convention, 1901.

Published in Bankers' magazine, Nov. 1901, vol. 63, p. 844-48.

RIDGELEY, W. B. Government control of banks and trust companies. Annals of the American academy, July, 1904, vol. 24, p. 15-267.

Discusses briefly the growth of trust companies and regulations with reference to reserves.

ROLLINS, MONTGOMERY. Laws regulating the investment of bank funds. Boston, 1905.

A convenient compliation of the laws of various states in the Union restricting the investment of funds of banks, trust, safe deposit companies, etc.

ROSENDORFF, RICHARD. Treuhandgesellschaften und ihre Funktionen. Jahrbücher für Nationalökonomie und Statistik, May. 1906, 3d ser. vol. 31, p. 604-621.

An interesting discussion of the organization of trust companies on the Continent.

WHITE, HORACE. Trust companies and the clearing house. Nation, Feb. 12, 1903, vol. 76, p. 126.

Gives a brief statement of the action of the New York clearing house as to trust company reserves.

Young, G. W. & Company. Digest of laws relating to trust companies of the United States. New York, 1905.

A convenient compilation giving contemporary law in classified form.

KINDS OF DEPOSITS

The changes in our law with respect to trust company reserves reflect the changes which have come about in the character of trust company deposits. As the scope of the trust company has broadened from a strictly fiduciary business until it has come to include a variety of activities similar to those carried on by commercial banks, its deposits have likewise changed in character.

Deposits against which reserves are required may be grouped according to their general nature under:

1. fiduciary deposits, or deposits held in trust; and
2. general banking deposits.

FIDUCIARY DEPOSITS

The "old line" trust company exists for the purpose of caring for the trustee business. The deposits which it receives are usually not subject to check and it generally requires prior notice for the withdrawal of funds. Many states require trust companies to deposit securities with state officials as a guarantee for the proper execution of trusts; such general deposit

being accepted in lieu of special bond or security in the case of each trust.

For typical laws requiring such deposits compare: Ill. Rev. St. 1905, c. 32, sec. 134-6; Mich. Comp. Laws, 1897, sec. 6157; Tex. Civ. St. 1897, art. 642; Wis. Rev. St. 1898, sec. 1791e.

Certain states also provide that trust funds and accounts must be kept separate from all other funds and accounts of trust companies.

See Ohio, Ann. St. 1906, sec. 3821b for a typical provision; also compare Ky. St. 1903, sec. 612a.

GENERAL BANKING DEPOSITS

The reserves required of trust companies against their general banking deposits frequently vary with the form of the l'ability. Certain states require a given percentage of reserve against all deposits without reference to their form. Others require a reserve only against certain prescribed l'abilities.

Demand deposits

A majority of the states¹ which require reserves provide that the reserve is to be held against demand deposits.

Among the states which require reserves of demand deposits only are: Ala., Id., La., Mo., N. J., Tex. and W. Va. Other states require a reserve of deposits payable on demand or within ten days. See: Me., Mass. and Ohio.

¹ See laws of the states in alphabetic order under Regulations.

Deposits subject to check. In certain states trust companies are not permitted to open or carry current accounts against which checks may be drawn.

An opinion of the Attorney General of Wisconsin given in 1905, holds that funds received by trust companies are not subject to check.

The Attorney General of Iowa has recently given a sim-

ilar opinion.

Demand certificates. In 1900 the United States Circuit Court held that, in the absence of statutory provisions on the subject, a trust company authorized to receive money on deposit has lawful authority to issue certificates of deposit in the usual form. Bank of Saginaw v. W. Pa. T. etc. Co. 105 Fed. 491.

Time deposits

In some states¹ a reserve of time deposits is also required.

Time certificates. Certain states specifically include time certificates among the liabilities against which a reserve is required.

For a typical case see Cal.

Savings deposits. The percentage required against savings deposits is frequently less than that against deposits payable on demand or against total deposits.

See the laws of Utah which require from 15 per cent to 20 per cent reserve of demand deposits as compared with a 10 per cent reserve for savings.

See also the laws of Kansas which require a reserve of only 10 per cent of time deposits as compared with 25 per cent of deposits subject to check; and the provisions of South Dakota; requiring 10 per cent of time as against 25 per cent of demand deposits.

Aggregate deposits

Quite a number of states¹ require a given percentage of reserve against all deposits of trust companies.

For laws making this requirement see: Conn., Ga., N. M., N. Y., and Wy.

Ratio of reserves to deposits

Recent legislation shows a tendency to require reserves of trust companies but the ratio of reserve required frequently varies with the kind of deposits: in certain states the reserve is based upon total deposits, in others a distinction is drawn between the reserve required for time deposits and those payable on demand, in still others reserves are required of demand deposits only.

WHAT CONSTITUTES BANKING

The laws of the several states show an evident attempt to vary the amount of reserve according to the powers which trust companies are permitted to exercise.

In states where they are limited to strictly fiduciary activities there is usually less concern regarding a reserve than in those states in which they are also permitted to exercise functions usually performed by banks.

Much division of opinion exists not only as to whether trust companies are entitled to do a banking business, but also as to what really constitutes banking. The statutes on this point vary greatly in the

8

different states, and the court decisions present conflicting conclusions.²

² See State v. Lincoln T. Co., 1898, 144 Mo., 562; Binghampton T. Co. v. Clark, 1898, 32 N. Y., App. Div., 151; Venner v. Farmers' L. & T. Co., 1900, 54 N. Y., App. Div., 271; and Bank of Saginaw v. W. Pa. T. etc. Co., 1900, 105 Fed., 491.

Also see 3 Am. & Eng. Enc. of Law (2d ed.), 789-91; 5 Cyc. of Law & Proc. 431-2; and Am. Dig. 1905B, col. 471.

REGULATIONS

The wide range of activities which trust companies undertake in the United States has made the question of reserves for their funds of greater significance in this country than in any other part of the world.

Foreign countries

In England strictly fiduciary business is still largely entrusted to individuals, and that which is done by banks is incidental to their general business. A few of the largest American trust companies have established branches in London and in some other foreign cities, but reports from these branches show that their operations are limited mainly to the issue of letters of credit and to the purchase and sale of exchange and of securities designed for investment.

In Germany³ and Austria the so called mortgage banks undertake some classes of work commonly done by trust companies in the United States, but their fiduciary activities are limited. Within recent years cor-

³ For general laws applying to trust companies see Bürgerl. Gesetz Buch, sec. 1189; also the Laws of July 13, and of Dec. 4, 1899.

porations exercising the usual trust company functions have sprung up in Germany, and certain American companies have established branches which do an active trust company business.

Among the institutions in France somewhat analagous to our trust companies may be included the Société Generale, the Credit Lyonnais, and especially the Credit Foncier.

In New Zealand¹ there has been a significant development in the establishment of the Public Trust Office, which was made a department of the government in 1872. Good faith in its administration is guaranteed by statute and the colony is pledged to maintain the integrity of funds placed within its care.⁵

These illustrations of the business of trust companies in forcign countries indicate that their most conspicuous function, apart from strictly fiduciary activities, is to handle interest bearing accounts, time certificates of deposit, debentures, and other long time funds of the community. Regulations with reference to their funds do not, therefore, have as great significance as if they performed the variety of functions undertaken by trust companies in the United States.

United States

Alabama. Laws, 1903, no. 522, secs. 5, 17. Requires a reserve of 15% of demand deposits, 3 of

⁴ See the Public Trust Office Consolidation Act, New Zealand, Statutes. 1894, Act, No. 50; also the amendments of 1895, Act, No. 61, and of 1901, Act, No. 55.

⁵ For a typical regulation relating to Public Trustees in Australia, see South Australia, Acts, 1904, No. 854.

which may consist of balances due by banks and bankers.

Arizona. No provisions requiring a reserve.

Arkansas. No provisions requiring a reserve.

California. Laws, 1905, c. 296, sec. 24. If a trust company does a banking business, the general banking laws apply. Requires a cash reserve of at least 20% of its demand or immediate liabilities and time certificates of deposit in all places having a population of 200,000 and over; elsewhere the reserve required must be 15%. One-half of such cash reserve may consist of money on deposit, subject to call, with any solvent bank or trust company. Cash includes specie, national bank notes, legal tender notes, and all the paper obligations of the United States circulating as money, and exchanges for clearing house associations.

Colorado. No provisions requiring a reserve.

Connecticut. Gen. St. 1902, sec. 3400. Requires a reserve fund of 15% of its aggregate deposits. Of this reserve, not less than 15 is to consist of gold and silver coin, the demand obligations of the United States or national bank currency, and is to be held by

^{*}See Ann. St. Rev. Supp. 1896, vol. 3, sec. 544, providing that trust companies may not transact a banking business, but the fact that they are permitted to receive demand deposits and to discount paper indicates that the line between that which is, and that which is not, strictly banking business has not been closely drawn.

such bank or trust company in its banking office. The remainder may consist of balances, subject to demand draft with approved reserve agents, and of railroad bonds which are legal investments for saving banks of the state. The railroad bonds are at no time to exceed at par value 1 of the total reserve.

Delaware. No provisions requiring a reserve.

District of Columbia. No provisions requiring a reserve.

Florida. No provisions requiring a reserve.

Georgia. Code, 1895, sec. 1941, Supp. 1901, sec. 6462. Trust companies doing a banking business are required to keep a cash reserve equal to at least 25% of aggregate deposits.

Hawaii. No provisions requiring a reserve.

Idaho. Laws, 1905, p. 175. Requires a reserve in available funds of not less than 15% of demand liabilities but ½ of such sum may consist of balances due from solvent banks.

Illinois. Rev. St. 1905, c. 32, secs. 129-47. There is no provision requiring a reserve, but it is the practice of the State Auditor to require state banks, located in Chicago, exercising trust company powers to

⁷ Trust companies are organized under Act of Cong. Oct. 1, 1890.

carry a cash reserve of not less than 25% of their commercial deposits. A less reserve is required of contract or savings deposits. Institutions elsewhere are required to maintain a reserve of 15% of commercial deposits.

Indiana. No provisions requiring a reserve.

Iowa. Code, 1897, secs. 1867, 1889 as amended by Laws, 1904, c. 65. Provides that trust companies organized under the banking laws may receive time deposits. The reserve required of companies thus organized is 15% of total deposits in places having a population of 3,000 or over, and 10% elsewhere; 34 of the reserve may be kept on deposit subject to call with other state or national banks.

Kansas. Gen. St. 1905, sec. 1528. Requires a reserve for trust companies equal to 25% of deposits subject to check and 10% of time deposits, in the same manner and subject to the same rules as state banks. In lieu of deposits in banks, the legal reserve may include United States bonds and demand loans secured by United States, state, county, or municipal bonds of the cash value of such loans.

Kentucky. St. 1903, secs. 584, 612a. Trust companies doing banking business are required to reserve at least 15% of total deposits and in cities of over 50,000 population, at least 25%. Of this reserve 1/2 is to be in money and the balance in funds payable on demand from other banks.

Louisiana. Laws, 1902, no. 45. Requires a reserve in lawful money of the United States or in cash due from other banks or bankers equal to 25% of the aggregate amount of its demand deposits, 8% of which is to be kept in cash. The remainder may be lawful money of the United States, cash due from other banks, bills of exchange, discounted paper maturing within not more than one year, bonds, stocks, or securities of the United States, of any state of the United States, of the municipalities, or corporations, public or private, thereof, or of the levee boards of Louisiana; provided that deposits, made in a savings bank or in a savings department of a bank also doing a general banking and trust banking business, which are made on the condition that they may not be withdrawn except on notice, are not to be considered demand deposits within the meaning of this section.

Maine. Rev, St. 1903, c. 48, sec. 80, as amended by Laws, 1905, c. 15. Requires a cash reserve equal to at least 15% of the aggregate amount of its deposits subject to withdrawal on demand or within ten days. In Yeu of such cash reserve 2% of the 15% may consist of balances payable on demand due from approved banks and trust companies and 1% may consist of bonds of the United States, of the District of Columbia, and of certain designated states.

Maryland. Trust companies operate under charters granted by special acts of the Legislature and any limitations as to reserves are to be found in the separate charters.

Massachusetts. Laws, 1904, c. 374, as amended by Laws, 1905, c. 331. Requires a reserve of 15% of the aggregate amount of deposits which are subject to withdrawal upon demand or within ten days. Not less than 1/2 of such re s to consist either of lawful money of the United es, gold certificates, silver certificates, or notes a s issued by any lawfully organized national ba association, and not less than 1/2 of the remain f such reserve may consist of balances, payabl., approved national banking as demand, due from iations, and the remainder may consist of bor f the United States or of the commonwealth computed at their par value, which are the absolute property of such corporation.

Michigan. Comp. Laws, 1897, sec. 6165. Requires a teserve of 20% of matured obligations and money due and payable. 34 of which may be kept in approved banks or trust companies.

Minnesota. No provisions requiring a reserve.

Mississippi. No provisions requirng a reserve.

Missouri. Rev. St. 1899, secs. 1280, 1304. Requires a reserve equal to at least 15% of the aggregate amount of demand deposits.

Montana. Civ. Code, 1895, secs. 584, 590-611. There is no law specifically requiring trust companies to carry a reserve, but it is the practice of the banking department to require the same reserve against trust

company deposits as is required of banks of discount. This reserve must equal at least 20% of immediate liabilities. Of this amount ½ is to consist of balances due from solvent banks and ½ is to be held in cash which may include specie, legal tender notes, and all bills of solvent banks.

Nebraska. No provisions requiring a reserve.

Nevada. No provisions requiring a reserve.

New Hampshire. No provisions requiring a reserve.

New Jersey.⁸ Laws 1899, c. 174, sec. 20. Requires a reserve of at least 15% of all immediate demand liabilities. Of this amount ‡ may consist of balances due from solvent banks or trust companies and ‡ is to be held in cash on hand.

New Mexico. Laws, 1903, c. 52, sec. 10. Requires a reserve of at least 15% of the aggregate amount or liabilities not including those liabilities for which bonds of at least \$50,000 must be deposited with the Auditor of the Territory. Of this reserve may consist of balances due from approved national, state, or territorial banks or trust companies.

⁸ See N. J. Laws, 1899, c. 174, sec. 7, forbidding trust companies to discount commercial paper. However, sec. 10 gives them specific authority to purchase, invest in and sell promissory notes and bills of exchange, and sec. 18 gives them authority to receive deposits subject to check. In reality, therefore, N. J. permits trust companies to do actual banking business.

New & Laws, 1906, c. 337. Requires trust companie, having principal place of business in any city with a population of over 800,000, to keep on hand a 1 rve fund equal to at least 15% of aggregate

deposits. serve fund equal to at least 15% of aggregate

18

serve fund may, and lawful money of the silver certificates, or vfully organized nanay consist of bonds, sued by the United issued in compliance or second class in the of money on deposit

subject to call, in approved banks or trust companies in the state having a capital of at least \$200,000 or a capital and surplus of \$300,000.

Trust companies having principal place of business in cities of less than 800,000, are required to keep on hand a reserve fund equal to at least 10% of aggregate deposits. The provisions for the composition of the reserve are similar to those for the larger cities except that the percentage is 30 instead of 33½.

North Carolina. Each trust company is incorporated by special act of the Legislature and any limitations as to reserves are to be found in the separate charters.

North Dakota. No provisions requiring a reserve.

Ohio. Ann. St. 1906, sec. 3821b. Requires a reserve equal to 15% of demand deposits or those payable within ten days. Of this reserve ½ may consist



of clearing house certificates representing specie or lawful money, 1/3 must consist of bonds of the United States or of Ohio, and the remaining 1/3 must be in lawful money of the United States.

Oklahoma. No provisions requiring a reserve.

Oregon. No provisions requiring a reserve.

Pennsylvania. No provision of law requiring a reserve. However, the Banking Department requires a reserve in cash and amounts due from banks of 15% for country companies and approximately 20% for city companies.

Rhode Island. Each trust company is incorporated by special act of the Legislature and any limitations as to reserves are to be found in the separate charters.

South Carolina. Provisions similar to Rhode Island.

South Dakota. Laws, 1905, c. 74. Requires a reserve of cash on hand or on deposit in solvent banks equal to 10% of time deposits and 25% of deposits pavable on demand.

Tennessee. No provisions requiring a reserve.

Texas. Laws, 1905, c. 10. Requires a reserve of

^{*} See Pa. Dig. of Laws, 1903, p. 271, secs. 1-21, prohibiting trust companies from engaging in banking except as authorized. However, they are granted power to receive demand deposits, and to purchase bills of exchange. As the power to purchase commercial paper differs only in form from the power to discount it, trust companies are really permitted to undertake important banking functions.

cash on hand and cash due from approved banks and trust companies equal to at least 25% of the aggregate amount of demand deposits; 10% of such reserve is to be actual cash.

Utah. Rev. St. 1898, secs. 378, 424. Requires a reserve of demand deposits equal to 20% in cities of 25,000 or over and 15% elsewhere; also provides a reserve of 10% for savings deposits.

Vermont. There is no provision of law regarding a reserve. 10

Virginia. Trust compan'es are incorporated by the State Corporation Commission and any limitations as to reserves are to be found in their separate charters.

Washington. No provisions requiring a reserve.

West Virginia. Laws, 1901. c. 83, as amended by Laws, 1905. c. 45. Requires a reserve equal to at least 15% of demand deposits. In lieu of lawful money, 34 of such reserve may consist of balances payable on demand due from approved banks.

Wisconsin. No provisions requiring a reserve.

Wyoming. Rev. St. 1899, sec. 3132 as amended by Laws, 1903, c. 50. Requires a reservo of at least 25% of liabilities to depositors. This reserve is to consist of cash on hand or on deposit subject to call with national or state banks approved as reserve agents.

¹⁰ However, see Vermont St., 1894, sec. 4106, providing that deposits not exceeding in the aggregate 20% of a company's assets may be made in designated banks or trust companies.

MAINTENANCE OF THE RESERVE

Provisions Requiring Maintenance

The provisions requiring maintenance of a reserve may be grouped under: I. statutory requirements; 2. regulations of state department—usually the banking department; 3. limitations in charters granted by special acts of the l.g slature.

Statutory requirements

A reserve is definitely required by law in about half of our states.¹¹

For typical provisions compare the laws of the following states: Ala., Cal., Conn., Ga., Id., Kan., Ky., La., Me., Mass., Mich., Mo., N. J., N. M., N. Y., Ohio, S. D., Tex., Ut., W. Va., Wy.

Regulations of state departments

In several states where there are no statutory provisions, reserves are required by the state banking department, by the state auditor, or by other officials entrusted with the supervision of trust companies.

Compare the regulations imposed in: Ill., Mont. and Pa.

[&]quot; See laws of states in alphabetic order under Regulations.

22

Lim ons in charters

In s es where trust companies are incorporated only by special act of the legislature, such limitations as may exist with regard to reserves are to be found in the e charters.

For state ulustrating this n and con R. I., and b. J. Also see V compan the State Corporation Com

on compare: Md., N. C., companies incorporated by

PENALTIES FOR IMPAIRMENT

Penalties for failure to maintain the reserve required by law may be grouped under: 1. suspension of loans and discounts; 2. prohibition of dividends; 3. tax on impairment of reserves; and 4. declaration of insolvency.

Suspension of loans and discounts

One of the most common methods of compelling maintenance of the reserve is to prohibit the making of new loans and discounts until the reserve has been restored to the required amount.

The New York' law of 1906 which is typical of this method provides that if the money reserve of any trust company is less than the amount required by law such trust company is not to increase its liability by making any new loans or discounts otherwise than by discounting bills of exchange payable on sight until the full amount of its lawful money reserve has been restored. The superintendent of banks is to notify any trust company whose lawful reserve is below the amount required, that it must make good such

¹² Laws, 1906, c. 337.

reserve, and if it fails to do so within thirty days it is to be deemed insolvent and may be proceeded against as an insolvent moneyed corporation.

For similar provisions see: Conn. Gen. St. 1902, sec. 3400; Me. Rev. St. 1903, c. 48, sec. 80; N. J. Laws, 1899, c. 174, sec. 20; N. M. Laws, 1903, c. 52; Ohio, Ann. St. 1906, sec. 3821b; Tex. Laws, 1905, c. 10; W. Va. Laws, 1901, c. 83 as amended by Laws, 1905, c. 45.

Prohibition of dividends

Another common requirement provides that trust companies shall not make dividends of profits until the reserve is restored.

For provisions on this point see: Conn. Gen. St. 1902, sec. 3400; N. M. Laws, 1903, c. 52; N. Y. Laws, 1906, c. 337; Ohio, Ann. St. 1906, sec. 3821b; W. Va. Laws, 1901, c. 83 as amended by Laws, 1905, c. 45.

Tax on impairment of reserves

A tax on impairment of reserves has been urged as a substitute for the suspension of loans and discounts. Placing a tax on deficiencies, sufficiently high to make it unprofitable for a bank to allow the impairment to continue, would, it is maintained, provide greater elasticity with sufficient rigidity for safety. This method for maintaining reserves was recently urged before the New York legislature.¹³

Fines for impairment. Certain states impose forfeitures or fines in case of impairment of reserves below the point required.

Alabama, Laws, 1903, no. 522, provides for forfeiture in case of impairment of reserves in banks or trust companies as follows: whenever it appears to the State Treasurer that

¹³ See argument by Theodore Gilman submitted to the Committee on Banks, Assembly Chamber, Albany, N. Y., Mar. 1, 1904.

the res e has fallen below the amount prescribed, he is to cation that it is to be made good, and in case the company fails to restore the reserve within thirty days, it is to forfeit \$25 to the State for each day thereafter until the reserve is restored.

Montana Civ. Code, banks, but it is the pr apply the provisions to ut quire that whenever th equal the amount provimust require the co it fails to do so wi deemed guilty of a m be punished by a fine or \$500.

The penalties imposed for impairment of reserves, by the 84, relate specifically to e Banking Department to anies. The provisions rele funds on hand do not law the State Examiner e good the reserve, and if s after notice, it is to be and upon conviction is tothan \$100 nor more than

Declaration of inse

The power to declare a company insolvent, if it continues in its refusal to restore the reserve, is usually vested in officials connected with the banking departments in the several states.

Thus the Massachusetts" law provides that the Board of Commissioners of Savings Banks may notify any trust company whose reserve is below the amount required to make good such reserve, and if it fails to do so within sixty days the Commissioners may apply to a Justice of the Supreme Judicial Court to appoint one or more receivers to take possession of the property and effects of the company and to close up its business, subject to such directions as may from time to time be prescribed by the court.

See also: Conn. Gen. St. 1902, sec. 3400; Ky. St. 1903. sec. 616; N. M. Laws, 1903, c. 52; N. Y. Laws, 1906, c. 337.

⁴ Laws, 1904, c. 374, sec. 7.





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COMPARATIVE LEGISLATION BULLETIN
No 7

TAXATION OF TRUST COM-PANIES

MARGARET A. SCHAFFNER

MADISON WISCONSIN JUNE, 1906

INTRODUCTION

This bulletin is designed to meet the demand of legislators and business men for a condensed statement of the laws relating to the taxation of trust companies.

When they are taxed like banks only a brief reference is given to the banking laws.

This paper does not include any statement of organization or examination fees.

> CHARLES McCarthy, Legislative Reference Department.

TAXATION OF TRUST COM-PANIES

MARGARET A. SCHAFFNER

COMPARATIVE LEGISLATION BULLETIN - No 7-June, 1906

Prepared with the co-operation of the Political Science Department of the University of Wisconsin

WISCONSIN FREE LIBRARY COMMISSION LEGISLATIVE REFERENCE DEP'T MADISON WIS 1906



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MIT IN CALLED ON MALE LINES AND		AUE.
THE BASIS OF TAXATION	*****************	5
Taxes Based upon the Nature c	operty	5
Volume of Business	************	5
Amount of corporate inve	h	5
General deposits		- 6
Property held in trust		7
Annual earnings		7
Gross earnings	······	7
Gross amount of premiums		7
Net income		8
Kinds of Property		8
Tangible assets		8
Franchises		8
Taxes Based upon the Nature of	the Corporation	9
General corporation taxation		9
Bank taxation		9
Trust company taxation		9
LAWS		10
Foreign countries		10
United States		10

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RIDGELEY, WILLIAM BARRET and trust companies. A July, 1904. vol 24, p. 15 ernment control of banks of the American academy,

Discusses briefly the growth or trust companies.

Young, G. W. and Company. trust companies of the 1905. igest of laws relating to ted States. New York,

A convenient compilation giving form.

mtemporary law in classified

Existing laws for the taxation of trust companies vary greatly for the several states.

TAXES BASED UPON THE NATURE OF THE PROP-ERTY

The different taxes employed may be grouped according to the nature of the property right, which is taken as the basis of assessment. On this basis taxes are levied upon: 1. the volume of business; 2. annual earnings; 3. special kinds of property.

VOLUME OF BUSINESS

Taxes based upon the volume of business are levied upon: 1. the amount of corporate investment; 2. general deposits; 3. property held in trust.

Amount of corporate investment

A number of states² tax trust companies upon the amount of the corporate investment including capital stock, surplus, and undivided profits.

The following statement of trust company taxation aims to analyse and classify the taxes which exist under contemporary law, it does not aim to give a complete classification of possible taxes.

² See states in alphabetic order under Laws.

Capital stock. Taxation based upon the amount of capital stock is commonly found in our older states.

For typical cases see laws of: Conn., Md., Mass., Mich., N. H., N. J., N. Y., R. I.

The tax on capital st company on the aggreg the owners of the sepa.

Assessed to company.

Assessed to owner. 'the owners is illustrated ...

Surplus. Certain stat

assessed either to the ue of the shares, or to .res.

of N. Y. presents a typiny.

nent of separate shares to of Mich. and R. I.

so tax surplus.

Compare the laws of N. J. and N. Y.

Undivided profits. Others also include undivided profits.

For a plain statement of law on this point, see N. Y.

Special provisions for real estate. Since it is generally desirable to assess real estate separately for local purposes, a majority of the states have made provision for deducting the assessed value of the real property from the aggregate valuation of the capital stock.

For typical laws compare: Conn., Mich., N. J., N. Y., R. I.

General deposits

A tax upon the deposits of trust companies is imposed in a number of states.

Aggregate deposits. For a tax upon aggregate general deposits, see the laws of R. I. Also compare the laws of Vt. which place a tax upon the average amount of deposits after providing for certain deductions.

N.Z

Deposits upon interest. Typical illustrations of the taxation of deposits upon interest are found in the laws of Mass. and of N. H.

Property held in trust

Tax provisions relating to property held in trust, generally require trust companies to give a detailed report of all securities and investments held by them in order to subject such property to taxation.

For typical provisions, see the laws of Mass. taxing personal property held in trust. Also compare the laws of Md. and of Vt. for illustrations of the taxation of securities and investments.

ANNUAL EARNINGS

Taxes based upon the earnings of trust companies have not been as generally employed as those based upon volume of business. However, existing taxes levied according to earnings are placed upon: I. gross earnings; 2. gross amount of premiums; 3. net income.

Gross earnings

Recent legislation has placed a tax upon gross earnings in several states.

Compare the laws of the Dist. of Columbia for a 1½ per cent. tax on gross earnings and the laws of Md. for a 2½ per cent. tax on gross receipts.

Gross amount of premiums

Another method of reaching earnings is found in the tax on the gross amount of premiums.

For typical cases compare the laws of Mich. and of Ga.

Net income

Taxes based upon the net income of trust companies are sometimes employed to supplement other taxation.

The Wis law as amend method.

SPECIAL K

In certain cases, taxes property held by trust ence to the volume of of their annual earning taxes may be roughly gr levied upon: 1. tangible assets; 2. franchises.

05, c. 442 illustrates this

PROPERTY

ied upon the kinds of es without any refersiness or the amount rom this standpoint, according as they are

Tangible assets

The method of taxing trust companies upon their tangible assets exclusively has been quite generally supplemented in order to secure an adequate basis of assessment.

A typical case of taxation upon assets is found in Miss., Code, 1892, secs. 3749-58.

Franchises

Right to do business. A license fee for the privilege of conducting a corporate business is sometimes levied in a lump sum without any attempt at definite valuation of the property.

See the laws of Wis. for a typical provision.

Value of franchise. The value of the corporate franchise is made the basis of assessment in a number of recent laws.

For different methods of estimating the value of the franchise, see the laws of Mass. and of N. Y.

TAXES BASED UPON THE NATURE OF THE COR-PORATION

The assessment of trust companies as corporate bodies is provided for under the following systems:

1. general corporation taxation; 2. bank taxation; 3. trust company taxation.

General corporation taxation

The general provisions for the taxation of corporations apply in a number of states.

See the laws of: Minn., Miss., Nev., N. D., Okla., Ore., Pa., S. D.

Bank taxation

In more than half of our states taxation is the same as for banks.

Compare the laws of: Ala., Ariz., Ark., Cal., Col., Del., Fla., Id., Ind., Kan., Ky., La., Me., Mo., Mont., Neb., N. M., N. C., Ohio, S. C., Tenn., Tex., Ut., Va., Wash., W. Va., Wy.

Trust company taxation

About one fourth of our states have special provisions for the taxation of trust companies.

For leading provisions compare the laws of: Conn., D. C., Md., Mass., Mich., N. H., N. J., N. Y., R. I., Vt., Wis.

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Foreign countries

No important laws for companies have been dever ecial taxation of trust in foreign countries,

United States

Alabama. Taxation the same as for banks. For tax provisions see Const. 1901, secs. 217, 255; Code, 1896, sec. 3911, subd. 8; sec. 4122, subd. 55; Laws, 1896-7, no. 659, sec. 36.

Arizona. Taxation the same as for banks. For tax provision see Rev. St. 1901, secs. 3837-9.

Arkansas. Taxation the same as for banks. For tax provisions see Dig. of St. 1904, secs. 6919-28.

California. Taxation the same as for banks other than national. For tax provisions see Const. 1879, art. 13, sec. 1; Pol. Code, 1903, sec. 3608; Laws, 1905, c. 386.

Colorado. Taxation the same as for banks. For tax provisions see Ann. St. Supp. 1896, sec. 3810-3810b.

Connecticut. Gen. St. 1902, sec. 2328, 2331 as amended by Laws, 1903, c. 204 and by Laws, 1905, c. 54. The state tax is 1% of the market value of the stock less the local tax on the real estate.

Delaware. Taxation the same as for banks. For tax provisions see Rev. Code, 1893, p. 54; Laws, 1897, c. 381.

District of Columbia. Act of Cong. Oct. 1st, 1890, U. S. St. at L. vol. 26, p. 629. Real estate is taxed locally. There is also a $1\frac{1}{2}\%$ tax on gross earnings, and this is in lieu of personal taxes. Shares are not taxed.

Florida. Taxation the same as for banks. For tax provisions see Rev. St. 1892, sec. 336, subd. 11.

Georgia. Tax provisions for banks apply: see Const. 1877, art. 7, sec. 2; Laws, 1898, p. 78. In addition there is a 1% tax on all premiums: see Laws, 1900, p. 28.

Idaho. Taxation the same as for banks. For tax provisions see Const. 1889, art. 7, sec. 8; Pol. Code, 1901, sec. 1335.

Illinois. Trust companies organized under the general incorporation laws are taxed the same as other corporations thus organized. For tax provisions see Rev. St. 1905, c. 120, secs. 1, 3, 4, 32-4.

State banks complying with the requirements made of trust companies as to the deposit of securities with the state are authorized to accept and execute trusts. When s. h deposit has been made the bank becomes a trust company as well as a banking company, and such companies are assessed the same as state and national banks. For provisions see Rev. St. 1905, c. 120, secs. 13, 35-9.

Indiana. Taxation that provision see Const. 1901, secs. 8411, 846, 8469-74.

as for banks. For rt. 10, sec. 1; Ann. St. pp. 1905, secs. 8421,

Iowa, Trust companion taxed under the provisions for the taxation stocks. See Const. 1857, art. 8, sec. 2, annotations; Code, 1897, sec. 1322 as amended by Laws, 1906, c. 50; Code, secs. 1323–25, 1327.

Kansas. Taxation the same as for banks. For tax provisions see Const. 1859, art. 11, sec. 1-2; Gen. St. 1905, secs. 8276-8.

Kentucky. Taxation the same as for banks. For tax provisions see Const. 1891, sec. 174; St. 1903, secs. 4092–92b.

Louisiana. Taxation the same as for banks. For tax provisions see Const. 1898, art. 228-9; Rev. Laws, 1904, sec. 307.

Maine. Taxation the same as for banks. For tax provisions see Rev. St. 1903, c. 8, secs. 64-8; Laws, 1905, c. 172.

Maryland. Pub. Gen. Laws, 1904, art. 81, sec. 138 as amended by Laws, 1906, c. 84; art. 81, secs. 148-60. Trust companies are taxed upon their capital stock for state, county and municipal purposes. In no case is the aggregate amount of stock to be valued at less than the full value of the real estate and chattels, real or personal, belonging to the company.

art. 81, sec. 22 as amended by Laws, 1906, c. 404, fixes the rate of taxation on capital stock for state purposes at 16¢ per \$100.

art. 81, sec. 164. as amended by Laws 1906, c. 712. An additional state tax of $2\frac{1}{2}\%$ is levied upon the annual gross receipts of trust companies.³

Massachusetts. Rev. Laws, 1902. c. 12. secs. 2-4, 15. Real estate is taxed locally.

c. 14. secs. 35-6. A tax is placed upon all personal property held upon trust which would be liable to taxation if held by any other trustee residing in the commonwealth. A tax is also placed upon all deposits held upon interest, or for investment, other than those held in trust or subject to withdrawal upon demand or within ten days.

secs. 37-40. A further tax is placed upon the corporate franchises of trust companies. The value of the franchise is determined as follows: the tax commissioner is required to ascertain the true market value of the shares of capital stock, and is to estimate

^a See Pub. Gen. Laws, 1901, art. 81, sec. 153 for provisions requiring trust companies to give a detailed report to the state tax commissioners of all securities and investments held by them in trust or otherwise in order to subject such securities and investments to state, county, and municipal taxation.

therefrom the fair cash value which is to be taken as the true value of the corporate franchise. From this amount the value of real estate, assessed locally, is to be deducted. The rate of taxation is determined by making an apportionment to be whole amount of money to be raised by taxatic upon property in the commonwealth.

Michigan. Comp. Laws, 1897, scc. 6168. Real estate is taxed locally. The residue of capital is taxed as personal property. After deduction of real estate, shares are assessed by local assessors to owner at residence.

Laws, 1897, c. 106. In addition there is a tax of 2% of gross amount of all premiums.

Minnesota. Tax provisions for corporations apply. See const. 1857, art. 9, sec. 3; Rev. Laws, 1905, secs. 794, 797–8, 821, 838, 1685. Also see Nelson v. St. Paul T. I. & T. Co. 1896, 64 Minn. 101.

Mississippi. Tax provisions for corporations apply. See Const. 1890, art. 7, sec. 181; Code, 1892, secs. 3749–58.

Missouri. Taxation the same as for banks. For tax provisions see Const. 1875, art. 10, secs. 2, 21; Rev. St. 1899, secs. 5580, 9153.

Montana. Taxation the same as for national banks. For tax provisions see Const. 1889, art. 12, secs. 7, 17; Civ. Code, 1895, sec. 611; Pol. Code, 1895, secs. 3691-4.

Nebraska. Taxation the same as for banks. For tax provisions see Const. 1875, art. 9, sec. 1; Ann. St. 1903, sec. 10455.

Nevada. General tax provisions for corporations apply: see Comp. Laws 1900, secs. 1084-89. In addition, a license tax is placed upon trust companies the same as for banks: see secs. 1188, 1190.

New Hampshire. Pub. St. 1901, c. 65, sec. 5. The state tax is 3/4 of 1% on the aggregate general deposits drawing interest after deducting the value of all the real estate and of all the mortgage loans on real estate within the state made at a rate not exceeding 5%. In addition there is a tax of 1% on the special deposits and capital stock after deducting the value of all the corporate real estate not already deducted from the general deposits. Such taxes are in lieu of all other taxes against the corporation, their stock holders and their depositors on account of their interests therein.

New Iersey. Laws, 1903. c. 208, sec. 18. Each trust company is taxed in the district where its office is located upon the full amount of capital stock paid in and accumulated surplus; its real estate is taxed in the district where it is situated and this assessment is deducted from the assessment on the capital stock. Otherwise the capital stock, property and franchise are exempt from state taxation.

New Mexico. Taxation the same as for banks. For tax provisions see Comp. Laws 1897, secs. 257-9, 4025.

New Jork. Laws, 1901, c. 132 as amended by Laws, 1901, c. 535. Every company authorized to do a trust company business is required to pay an annual franchise tax equal to 1% on the amount of its capital stock, surplus, and und rofits.

> ded by Laws, 1901, c. A stockholder in a

> d as an individual for

led by Laws, 1902 c.

Laws, 1896, c. 908, 132, and Laws, 1902, c. trust company is not to b such stock.

Laws, 1896, c. 908 as 171. Real estate is taxe

ws, 1902, c. 172, pro-Laws, 1901, c. 132 vide for annual reports by trust companies stating the amount of capital stock, surplus, and undivided

profits, and such other data as the comptroller may reauire.

ly.

Laws, 1896, c. 908, as amended by Laws, 1901, c. 118, 132, and 558 make provision for payment of taxes and prescribes penalties for failure to pay.4

North Carolina. Taxation the same as for banks. For tax provisions see Const. 1876, art. 5, sec. 3; Revisal, 1905, secs. 5162, 5267-70. Trust companies not doing banking business are taxed under the general provisions for the taxation of private corporations: see Revisal, 1905, secs. 5108, 5190.

North Dakota. General tax provisions apply: see Code, 1899, sec. 1198.

⁴For laws holding trust companies liable for the transfer tax upon-making a transfer of securities, deposits, or assets of a decedent, see Laws, 1886, c. 906 as amended by Laws, 1905, c. 368.

Also see Laws, 1905, c. 241, as amended by Laws, 1906, c. 414, under which trust companies are required to pay a tax on transfers of stock at the rate of 2c on \$100.

Ohio. Taxation the same as for banks. For tax provisions see Const. 1851, art. 12, secs. 2, 3; Ann. St. 1906, secs. 2762-9.

Oklahoma. Corporation laws apply. For tax provisions see Rev. & Ann. St. 1903, secs. 5913, 5915, 5928-31.

Oregon. Corporation laws apply. For tax prosions see Ann. Codes & St. 1902, secs. 3044, 3049, 3055.

Pennsylvania. Corporation tax provisions apply. See Pub. Laws, 1885, p. 193; Pub. Laws, 1889, p. 420 as amended by Pub. Laws, 1891, p. 229; Pub. Laws, 1893, p. 353 and p. 417; Pub. Laws, 1897, p. 292; Pub. Laws, 1899, p. 261. Also see Brightly's Dig. of Laws, 1903, p. 829.

Rhode Island. Gen. Laws, 1896, c. 29, sec. 4; c. 45, secs. 1, 10; c. 46, secs. 11-12. The state tax is 40¢ per \$100 of deposits. After deducting value of real estate, shares are taxed to owner at residence by local assessors.

South Carolina. Taxation the same as for banks. For tax provisions see Code, 1902, secs. 313-24.

South Dakota. Corporation laws apply. For tax provisions see Const. 1889, art. 11, secs. 2-4: Pol. Code, 1903, secs. 2053-55, 2057-59, 2079.

Tennessee. Taxation the same as for banks. For tax provisions see Code, 1896, secs. 790-2.

Te. Taxation the same as for banks. For tax provisio see Civ. St. 1897, arts. 5061-4, 5077-80, 5084, 5 8, 5243 i-j; Supp. 1904, art. 5049, Annotations; Supp. 1906, arts. 5243 i-j.

Utah. Taxa provisions see Co 1898, secs. 2507--9 s for banks. For tax 13, secs. 2-3; Rev. St.

Vermont. St. amended by Laws, 20, sec. 40. Ever and trust company business therein, is rea 368-71; sec. 583 as 3; and Laws, 1902, no. pany or savings bank by the state and doing pay a state tax assessed

at the rate of 16 of 1% annually, upon the average amount of its deposits including money or securities received as trustee under order of court or otherwise, after deducting therefrom the average amount not exceeding 10% of its assets invested in U. S. government bonds, and also the amount, if any, of individual deposits in excess of \$2,000 each, listed to the depositors in towns of this state wherein such depositors reside. No other tax is to be assessed against deposits or depositors except on individual deposits exceeding in the aggregate \$2,000. Real estate is taxed locally.

Virginia. Taxation the same as for banks. For tax provisions see Const. 1902, sec. 182; Code, 1904, sec. 492c as amended by Laws, 1906, c. 291; secs. 1040a--b; Appendix, secs. 17--22.

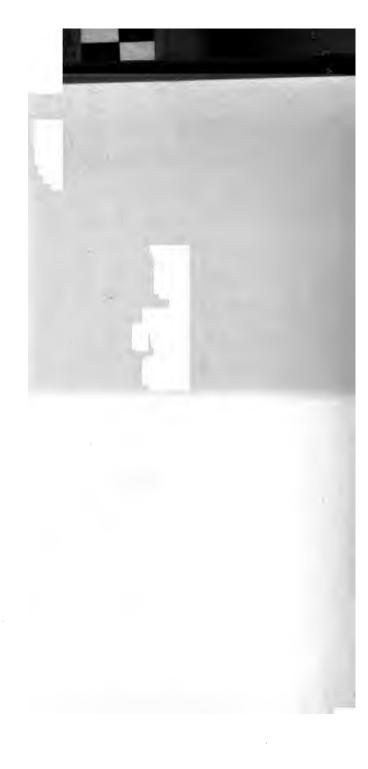
Washington. Taxation same as for banks. For tax provisions see Const. 1889, art. 7, sec. 3: Codes & St. secs. 1677-81; Supp. 1903, sec. 1677.



West Virginia. Taxation the same as for banks. For tax provisions see Const. 1872, art. 10, sec. 1; Code, 1899, c. 29, as amended by Laws, 1904, c. 4, secs. 55d and k, 79, 83; by Laws, 1905. c. 35, secs. 55d and k. 79; and by c. 38.

Wisconsin. Rev. St. 1898, sec. 1039, and sec. 1222k as amended by Laws, 1905, c. 442. Requires payment of a license fee of \$500 annually, also a tax of 3% on the net income. This license together with the percentage on net income is in lieu of all other taxes except the tax on real estate, which is assessed locally.

Wyoming. Taxation the same as for banks. For tax provisions see Rev. St. 1899, secs. 1774, 3128.



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WISCONSIN FASE LIBRARY COMMISSION LEGISLATION REFERENCE DEPARTMENT COMPARATIVE LEGISLATION BULLETIN No. 8

MUNICIPAL GAS LIGHTING

ERNEST SMITH BRADFORD.

MADISON, WISCONSIN SEPTEMBER, 1900

This list of gas plants in Wisconsin and other states, together with bulletin No. 5 on municipal electric lighting, will give the student of public lighting an idea of the extent of municipal ownership in these industries.

CHARLES MCCARTHY

Legislative Reference Department

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MUNICIPAL GAS LIGHTING

ERNEST SMITH BRADFORD

COMPARATIVE LEGISLATION BULLETIN—No 8—SEPTEMBER, 1906,
Prepared with the co-operation of the Political Science
Department of the University of Wisconsin

WISCONSIN FREE LIBRARY COMMISSION LEGISLATIVE REFERENCE DEP'T MADISON, WIS. 1906 R 800.10



CONTENTS

	PAGE.
REFERENCES	3
UNITED STATES	5
Growth of the gas business	5
Comparison with electric light stations	6
Gas plants by states—private and municipal	7
Municipal coal and water gas plants	9
Municipal acetylene gas plants	12
Municipal gasoline gas plants	13
Municipal natural gas plants	14
FOREIGN COUNTRIES	15
Canada	15
South America	15
Great Britain	15
WISCONSIN	17
Coal and water gas plants	17
Acetylene gas plants	17
Gasoline gas plants	18

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- Brown's directory of American gas companies. New York, 1906.

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JAMES, E. J. Relation of the municipality to the gas supply. American economic association. Publications, 1886, vol. 1, p, 7-76.

Excellent general discussion.

Lyons, B. F. Private vs. municipal ownership. League of American municipalities. Bulletin, Nov. and Dec. 1905, vol. 3, p. 155.

Opposes municipal ownership. December number treats of gas plant at Wheeling, W. Va.

- MUNICIPAL year book. New York, 1902.
 - Compiled by M. N. Baker, associate editor of Engineering news. Contains figures only for cities over 3,000 population.
- MUNICIPAL year book of the United Kingdom. London, 1906. Relation of American municipalities to the gas and electric light service. Annals of the American academy, Jan. 1906, p. 200-33.

MUNICIPAL GAS LIGHTING

A symposium of present conditions in New York, Chicago, St.Louis, Boston, Cleveland, Buffalo, Seattle, Duluth, and seven other large American cities.

U. S. — CENSUS OFFICE. Report of the 12th census. Wash ington, 1900, vol. 10, p. 705-29

Contains history the United States. table p. 722.

4

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U. S. — Census office. Statistics of cities having a population of 8,000 to 25,000: I903. Washington, 1906. Bulletin no. 45.

See tables 9 and 10, p. 75-79, for statistics of gas works in various cities.

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U. S.—LABOR, BUREAU OF. Municipal ownership in Great Britain, by Frederic C. Howe. Washington, 1906. Bulletin, No. 62, Jan. 1906, p. 1-123.

Full discussion of both gas and electric light plants. Favorable to municipal ownership.

U. S. — LABOR BUREAU OF. Water, gas and electric light plants, 1899. (Annual report, vol. 14, p. 375-531)

Centains much useful information and many tables. Reports of 367 gas plants out of 965.

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UNITED STATES

Growth of the industry

The business of supplying gas for lighting developed much earlier than that of furnishing electric light. In England, we hear of a gas plant as early as 1800,1 while in the United States in 1806, "David Melville, of Newport, R. I. lighted his premises by means of coal gas which he had manufactured thereon." Gas plants were established in Baltimore in 1816, Boston, 1822, New York, 1823, Brooklyn, 1825, and Bristol, R. I. 1825. Long before the present movement for municipal ownership, gas plants had been established in nearly all the large cities of the United States, and after a period during which many new gas companies were formed, competition gave way to consolidation, and the business settled down to a fairly stable basis. Coal gas had been at first supplied; water-gas, much cheaper, after Lowe's new process was invented, about 1875, revolutionized the industry; until at present more water gas than coal gas is sold by American gas companies.1

 $^{^{1}\,\}rm{U}$, S. —Census office. Report of the 12th census, 1900, vol. 10, p. 711, 713.

MUNICIPAL GAS LIGHTING

EASE OF GAS PLANTS, 1850-1906 (Table 1)2

		Total plants	Municipal plants
	- 7	-	2
850	**	30 221	0
860	**	221	2
870		390	4
880		No report	7
890	**	742	9
900	44	877	15
906		940a	30°

Comparison

Over half cated in cit

at stations

1900 (484) were loo 25,000 population;

while of electric lighting plants, three-fourths were located in places having a population of 5,000 or less.

COMPARATIVE NUMBER OF GAS PLANTS AND CENTRAL ELECTRIC STATIONS (Table 2) 4

Population of towns in which located	Central electric stations 1902	Gas plantas 1900
Under 5,000	2,714 675	200 484
25—100,000 100,000—500,000 500,000 and over	128 73	124 39
500,000 and over	80	30
Total No. plants	3,620	877

² U. S. —Census office. Report of the 12th census, 1900, vol. 10, p. 705.

² Brown's directory of American gas companies, 1906. Besides 940 coal water and oil-gas plants, there were 117 gasoline gas plants, and 190 acetylene gas plants furnishing public or commercial gas lighting. See table 4.

 $^{^4}$ U. S.—Census office. Special report on central electric light and power stations, 1902, p. 14. §

Does not include natural gas plants.

The amount invested was however, a little greater in the gas business than in electric stations, with a labor force about the same, and an income nearly as great:

COMPARATIVE SUMMARY OF GAS PLANTS AND CENTRAL ELEC-TRIC STATIONS (Table 3)⁴

·	Central elec- tric stations, 1906	Gas plants, 1900
No. of plants Cost of construction and equipment. Cost of supplies, material and fuel Salaried officials and clerks—number Salaries. Wage earners—average number. Wages Income	\$504,740,000 \$22,900,000 6,996 \$5,663,000 23,330	\$567,000,000° \$20,600,000 5,904 \$5,278,000 22,456 \$12,456,000 \$75,700,000°

Gas plants by states—Private and municipal

Since the date of these figures, the number of gas plants has increased from 877 to 940, while the electric lighting stations now number 4284; but in the smaller towns, heretofore open only to electric lighting, many small gasoline and acetylene gas plants have been installed which in 1906, number 117 and 190 respectively. Exclusive of the 360 natural gas plants in the United States, there are, at present, a total of 1,226 plants manufacturing either coal, water, oil, acetylene or gasoline gas for purposes of public or commercial lighting. 110 of these are municipal. The table by states is as follows:

Capital.
Value of products.

SUMMARY OF GAS PLANTS BY STATES

(Table 4)8

				_		_	_	
	COAL & WATER ENI		ENE	GASO	DLINE	NAT	URAL	
	Total	Munic.	La .	Munic.	Total	Munic.	Total	Munic.
Alabama	10	1	100	4			1	
Arizona	3		120		222283			20000
Arkansas	5	158550	1	00.00	25.5505		2	
California	58	2		2000	10000	00.73.05	3	F 650
Colorado	10	100		255		3.44	1	*****
Connecticut	22	100.40		****	***	27.07.46		*****
District of Columbia	9			****		******	12.00	
Delaware	2 5	44.6)		0.55				
Florida	11			5		*****	*****	****
	12	2	T .	2		*****	20.00.03	
deorgia	2	1 7			*****			
daho	57	3 16.84	3	1	7		27.22.75	*****
llinois	37		6		1 7	3	190	
ndiana		*****	0	3	*****	*****	130	
ndian Territory	2	*****	111111		100725			
owa	38	******	13	2	47	23	11.17.0	****
ansas	11	*****	7	1		+++++	26	1
entucky	17	1	*****	*****	20.400	*****	1	
onisiana	3	*****	1	******		****		
aine	9		14	25.62.63		12.52.55	11000	
laryland	11	*****	4	*****	*****	******	*****	
lassachusetts	69	5	11	*****	*****		188 60	
lichigan,	50	1	2		1		cons	
linnesota	18	4	5	3	18	13		****
dississippi	7	*** **		A 444	255.37	*****	+++ 44	
dissouri	24	1	4	47.554			3	
Iontana	2							
ebraska	10	*****	26	1	11	4		
evada	2	*****				******	V+ +48	
ew Hampshire	12	*****	3					
ew Jarsey	40		1	******				
ew Mexico	1	create.	· · · · · ·	** **	44.44		*****	
ew York	108	1	25	1	15		24	
orth Carolina	11							
orth Dakota	2		7	1				
Ohio	51	2	4				53	1
klahoma	4		2					
regon	4						*****	
ennsylvania	91	1	6	10000			104	21.20.60
hode Island	6		1					Section 1
outh Carolina	4							1
outh Dakota	7	2	5	3	2	1.000		
ennessee	8							
exas.	15		8	Section 1.		2.27	7.15.11.22	
ALBERT CALLET AN ADMINISTRA	1	******	. 0	STYCEF	THE R. S. S.	******	*****	

⁶ Compiled from Brown's directory of American Gas companies, 1906.
⁹ Includes a few oil-gas plants.

SUMMARY OF G	BAS PLANTS	BY STATES-	-continued.
--------------	------------	------------	-------------

	Coal & Water GAS		ACET	LENE	GA80	DLINE	NAT GA	URAL 18
Vermont	10 13 8 7 28 2	Munio.	Total	Munic.	Total	Munic.	Total	Manic.
Totals	940	30	190	25	117	55	361	

Municipal gas plants—Coal and water-gas

The first municipal gas plant was established in 1852, when the city of Richmond bought out a private company. Alexandria, Va. followed, in 1853; Henderson, Ky. in 1867; Bellefontaine, Ohio, in 1873; and by 1890 there were nine plants in the United States owned by municipalities. Since then the number has slowly increased until in 1900, the census office reported 15 with a total capital investment of \$1,734,592, and a product of 484,952,120 cubic feet of gas annually, valued at \$450,000. In May, 1906, there were twenty-nine municipal plants supplying coal or water-gas for lighting purposes, and one plant owned and operated by the United States government, as follows:

CITIES HAVING MUNICIPAL GAS PLANTS (Table 5) 11

d for lor lor gas in gas in	Per c sold fue fue No. c	85 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	
9		**************************************	
Annual	cubic feet	5,000,000 4,000,000 81,250,000 2,700,000 25,700,000 125,000,000 112,000,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000 2,500,000	
orice	fuel	85000000000000000000000000000000000000	
Net price	light	*, 19888888888888888888888888888888888888	
lo s sui	Miles	2000 2000 2000 2000 2000 2000 2000 200	
io. int in-	inn M	000 1901 000 000 000 000 000 000 000 000	
Pop. o	pelied 1900	25.50 25.50	1987
City		Telladega 3,000 901 5 5 5 5 5 5 5 5 5	tt for quantity.
State		Alabana California Connecticut Georgia Kantucky Massachusetts Michigan Minnesota Ninnesota New York Ohio Pennsylvania	Discour Gross pi

MUNICIPAL GAS LIGHTING

:882 No. of gas stoves in use 9,300 Per cen, sold for fuel 8558888888 668 c. p. CITIES HAVING MUNICIPAL GAS PLANTS. (Table 5)—continued. 44,000,000 13,000,000 42,000,000 38,630,000 116,000,000 525,000,000 Annual output cubic feet 2.000,000 fuel Net price light 844851-25 5 sutem Miles of Munic. plant in-sta led 1,000 15,000 1853 8,000 1876 18,000 1876 6,000 1870 5,000 1870 5,000 1870 Pop. of dis-trict sup-plied 1900 Alexandris
Charlottesville
Danville
Fredericksburg
Richmond
Wheeling
Danville (1.5 stock). Louisville (1-4 " Dell Rapids 12 DeSmet 19 Dakota **** **** *** ********* West Virginia *********** *********** State Virginia

19 Oil process.
14 Discount for quantity.

: 2

ø

In Louisville, Ky. and Danville, Ky. the city owns stock in the gas company, one-fourth in the former instance and one-fifth in the latter.

Municipal gas plants-Acetylene

The twenty-five municipal gas plants supplying acetylene gas for public and commercial lighting are located as follows:

MUNICIPAL ACETYLENE GAS PLANTS, 1906 (Table 6)16

	1.4	Populat'n
Alabama	Carrollton Fayette. Gurley Luverne.	278 452 831 731
Florida	Brooksville	641 509 300 203 541
Georgia	Ft. Oglethorpe (U. S. gov't)	479
Indiana	Darlington	727 444 8,618
Iowa	GladbrookHolstein	842 870
Minnesota	Bird Island Norwood. St. Michael	846 500 305
Nebraska	Nehawka	300
New York	Spencerport	715
North Dakota	Lisbon	1,046
Virginia	Fort Meyer (U. S. gov't)	331
Wisconsin	Palmyra	

¹⁶ Compiled from Brown's directory of American gas companies, 1906.

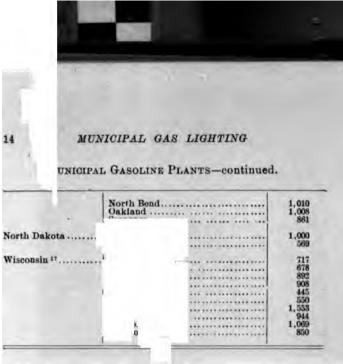
Two plants operated by the United States government are included in this list, one at Ft. Oglethorpe, Ga. and one at Fort Meyer, Va.

Municipal gas plants-Gasoline.

The fifty-six municipal plants supplying gasoline gas are as follows:

MUNICIPAL GASOLINE PLANTS (Table 7)

		Pop. 1900
linois	Arthur	858
	Ashton Shabbona	756 587
)Wa	Bancroft	839 807
	Brooklyn	1.188
	Charter Oak	7772
	Clarence	675
	Delta	691
	Durant	560
	Dysart	902
	Hedrick	1,025
	Manila	773
	Marcus	718 725
	Mediapolis	849
	Milton Monroe	917
	Morning Sun	948
	Newell	762
	Pleasantville	738
	Richland	534
	Riverside	698
	Shelby	692
	Sioux Center	810
	Williamsburg	1,100
	Winfield	820
innesota	Amboy	432
	Brandon	272
	Bricelyn	600
	Canby	1,100
	Cottonwood	549 942
	Hayfield	439
	Heron Lake	928
	Houston	542
	Lake Benton	890
	Madelia	1,272
	Monticello	818
	Mountain Lake	959
ebraska		
	Hartington	797



These gasoline gas plants are located almost entirely in the middle west, usually in cities of less than 1,000 population.

Municipal gas plants—Natural gas

In the 246 towns containing natural gas plants, there are 361 companies; of these only four are municipal, as follows:

	Population	
Dunkirk, Ind	3.187	
Channte, Kan	4.208	
Neodesha, Kan	1,772	
Lancaster, Ohio	15,000	

The natural gas supply is not constant, however, the supply gradually ceasing in some localities, and new wells developing in others. Different conditions prevail, generally, than in the business of supplying manufactured gas.

¹⁷ Population for places in Wisconsin from census of 1905.

FOREIGN COUNTRIES

Canada

In New Brunswick, the city of Moncton owns its gas plant; the towns of Newcastle, and Pictou acquired the gas plants, and discontinued them, supplying electricity instead. In the province of Ontario, the cities of Berlin, Brockville, Guelph, Kingston, London, Owen Sound, St. Thomas and Waterloo have municipal plants.

Virden, in the province of Manitoba, owns an acetylene gas plant.

South America

The city of Bahia, Brazil, has acquired the gas works.

Great Britain

In 1905, there were in the United Kingdom, 710 gas plants, of which 454 were private and 256 municipal. In 1906, the figures were 459 private plants and 260 municipal, as follows:

¹⁸ Municipal year book of the United Kingdom, 1903, p. 379.

GAS PLANTS IN GREAT BRITAIN, 1905-190619

	Municipal	Private
England and Wales	204 45 11	443 5 11
United Kingdom	260	459

¹⁹ Municipal year book of the United Kingdom, 1906, p, 381.

WISCONSIN

Coal and water-gas plants

There are 27 coal and water-gas plants in Wisconsin; none of them municipal. The list is as follows:

	Population
Appleton (Neenah, Menasha)	17,000
Ashland	
Baraboo	
Beloit	
Berlin	4,640
Chippewa Falls	
Ean Claire	
Fond du Lac	17,284
Green Bay	22,854
Janesville	13,707
Kenosha	16,235
La Crosse	
Madison	24,301
Manitowoc	12,783
Marinette (and Menomonie, Mich.).	15,354
Milwaukee (2 plants)	312,948
Oshkosh	30,575
Portage	5,524
Racine	32,290
Ripon	3,811
Sheboygan	24,026
Stevens Point	9.022
Superior (and West Superior)	36,551
Watertown	8,622
Waukesha	6,949
Wausau.	14.458
Wauwatosa	

Acetylene gas plants

There are three acetylene gas plants in Wisconsin: Deerfield, pop. 587, Milton, pop. 810, and Palmyra, pop. 710, the last being owned by the city.

Gasoline gas plants

Besides the ten municipal gasoline gas plants in this state, listed on p. 14, there are four privately owned plants: at Beave op. 5,615, Hortonville, d Markesan, pop. 787. pop. 890, Marion, pop. Most of the gasoline a established since 1900.

There are in Wiscon of a total of 42, as co tric stations out of a tou lene plants have been unicipal gas plants out

vith 46 municipal elec-3.

WISCO

LANTS-GASOLINE

(Table 9)

	Pop. dis- trict sup- plied	Am't bonds issued	No. of meters	Miles of mains	Price	No. public lamps
AltoonaCambriaClinton	700 680 900	\$5,500 \$5,500	45 55 84	1.5 2 3.25	\$1 50 1 25 1 25	22 26 30
Fox Lake	900 450 550	97 000	80 60 40	1 2.3	1 25	16
HilbertHoricon	1,600	\$7,000 \$8,000	80 80	5.5	1 25 1 00 1 50	16 61 28 19
Juneau Nekoosa Wautoma,	1,070 850		40	2,25	1 15	19



The many controversies to-day over boycotting, blacklisting, the use of injunctions etc., have been the cause of much legislation. This bulletin giving a summary of legislation on boycotting, will be found useful to all interests involved, as it is entirely impartial.

A bulletin on blacklisting will soon be issued.

CHARLES McCARTHY

Legislative Reference Department

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BOYCOTTING

GROVER G. HUEBNER

COMPARATIVE LEGISLATION BULLETIN - No. 9 - OCTOBER. 1906

Prepared with the co-operation of the Political Science Department of the University of Wisconsin

WISCONSIN FREE LIBRARY COMMISSION LEGISLATIVE REFERENCE DEP'T MADISON WIS. 1906 R800.10



CONTENTS

	PAGE
REFERENCES	3
DEFINITIONS	. 5
FORMS OF BOYCOTTING	6
Compound boycott	6
Primary boycott	6
Unfair list	6
Fair list	7
Union label	. 7
LAWS AND JUDICIAL DECISIONS	
Foreign countries	. 8
United States	10
SUMMARY	23
Legality of Boycotting	. 23
Compound boycott	. 23
Primary boycott	. 23
Unfair list	. 23
Fair list	. 24
Union label	. 24
STATUTES AGAINST BOYCOTTING	. 24
Picketing	. 24
. Conspiracy against workmen	. 24
Intimidation	. 25
Interference with employment	25
General statutes	
Prohibition of boycotting in name	. ,
COURT INTERFERENCE	
Common law	
Illegal acts accompanying boycotts.	
(Injunctions	

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Issued quarterly. Contains current laws, statistics and court decisions.

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U. S. — Labor dep't. Special report. vol. 10. Washington, 1904.

Collection of labor laws of U. S. to 1904.

DEFINITIONS

Connecticut. The term boycott is a compendious name used to describe a series of acts not in the line of lawful competition, commenced and continued by all persons who can be persuaded to join in them, to hinder and prevent the proper pursuit of a lawful business, with intent to injure the corporation, firm or individual against whom the boycott is directed. State v. Glidden, 1887, 55 Conn. 76.

United States. "A boycott is an organized effort to exclude a person from business relations with others, by persuasion, intimidation, and other acts which tend to violence, and thereby force him, from fear of resulting injury, to submit to dictation in the management of his affairs." Casey v. Cinn. Typo. Union No. 3, 1891, 45 Fed. 135.

A combination of employees to compel their employers, by threats of quitting and by actually quitting their service, to withdraw from a mutually profitable relation with a third person having no effect on the character or reward of the employees services, for the purpose of injuring such third person, is a boycott. Thomas v. Cincinnati, N. O. & T. P. Ry. Co. 1894, 62 Fed. 803.

The term boycott "implies a combination to inaugu-

rate and maintain a general proscription of articles manufactured by the party against whom it is directed." Oxley Stave Co. v. Coopers' International Union, 1896, 72 Fed. 695.

Michigan. A boycott is a combination of several persons to cause a loss to a third person by causing others, against their will, to withdraw from him their beneficial business intercourse through threats, that unless a compliance with their demands is made, the persons forming the combination will cause loss or injury to him; or an organization formed to exclude a person from business relations with others by persuasion, intimidation, and other acts of violence, and thereby cause him through fear of resulting injury to submit to dictation in the management of his affairs. Beck v. Ry. T. P. Union, 1898, 118 Mich. 497.

FORMS OF BOYCOTTING

Compound boycott

The boycott involving third parties is commonly known as the compound boycott.

Primary boycott

The boycott involving only the persons directly interested in the dispute is known as a primary boycott.

Unfair list

The unfair list is generally a list of employers published in labor papers and magazines in order to induce the readers to withhold their patronage until compliance with the demands of the employees has been made. It is not always regarded as a boycett.

Fair list

The fair list is the opposite of the unfair list. Legally it is not included under boycotting.

Union label

The same is true of the union label. Legally it is not a boycott and is nowhere, in the United States, illegal.

LAWS AND JUDICIAL DECISIONS

Foreign countries

England. Before 1875 the common law of criminal conspiracy was applicable. Three classes of conspiracy were recognized; 1. where the end to be accomplished is a crime in each of the conspiring parties; 2. where the purpose of the conspiracy is lawful, but the means to be resorted to are criminal; and 3, where, with a malicious design to do an injury, the purpose is to affect a wrong, though not such a wrong as when perpetrated by a single individual amounts to an offense under the criminal laws.1

Conspiracy and Protection of Property Act. 1875, 38 & 39 Vic. c. 86. This modifies the common law so that a combination to do, or procure to be done, any act in contemplation or furtherance of a trade dispute, is not indictable as a conspiracy if such act when committed by one person is not a crime punishable with imprisonment.

Though peaceful boycotting cannot under this act be treated as criminal conspiracy, it can be treated as civil conspiracy and damages collected. Quinn v. Leathem, 1901, 17 T. L. R 749.

This case is now generally followed. If the intent of the boycott is to maliciously injure it is actionable as a civil conspiracy.

Report of the Royal Commission of 1874.
 Bills are frequently introduced to change this act.

This statute (sec. 7) also, prohibits the use of violence, persistant following about, hiding of tools, cloths or other property, the watching or besetting of houses or other places of business and the disorderly following of persons by two or more.

New Zealand. The act of 1894, no. 13, changes the mode of procedure from criminal conspiracy to civil conspiracy, as is the case in England.

Belgium. The law of May 31, 1866, modified the law of conspiracy, but the law of May 30, 1892, levies severe penalties against intimidation, mob rule and the breaking of tools. There is no statute especially against boycotting.

Holland. The law of April 11, 1903, reinforces the penalties against violence and threats, which were already provided for in the common law. There is no special law against boycotting.

Austria. The law of April 7, 1870, art. 3, penalizes violence, threats and the forcing of others to enter combinations or to retire from such combinations. No special law.

France. The penal code of France suspends the common law and regulates strikes and the use of intimidation, threats, violence and similar acts. is no statute especially applicable to boycotts.

If a strike is called to maliciously injure the employer, rather than to benefit the strikers, it calls for damages. Cass. 9 June, 1896, Mounier c. Renaud.

Interference with employment by threats is prohibited.

Cass. ap. Caen, Oct. 21, 1897.

Italy. Pen. Code. art. 155, et. s. Similar to the French law.

Germany. The law of June 21, 1869, art. 153 imposes penalties against those who wish to coerce others by violence, threats, interdiction or otherwise.

Str. G. B. c. 360, par. 11. The boycott is practically declared to be illegal.

United States

There is no federal law directly dealing with boycotts. The Anti-trust Law has been applied in various cases (U. S. Comp. St. 1901, Title 56B. p. 3200; Act of July 2, 1890. sec. 1-8)

Thomas v. Cincinnati, N. Or. & Tex. Pac. Ry. 1894, 62 Fed. 803. In re Phelan, 1894, 62 Fed. Rep. 824; U. S. v. Debs et al. 1894, 64 Fed. 724; U. S. v. Cassidy et al. 1895, 67 Fed. 698.

Boycotts have also been declared illegal on the basis of interference with the provisions of the Interstate Commerce Law.

In re Grand Jury, 1894, 62 Fed. 40; S. Cal. Ry. v. Rutherford et al. 1894, 62 Fed. 796.

Federal courts have also taken account of the law against interference with the United States mails.

In re Grand Jury, 1894, 62 Fed. 840; U. S. v. Cassidy et al. 1895, 67 Fed. 698. U. S. v. Debs et al. 1894, 64 Fed. 724.

Federal courts sometimes declare boycotting to be unlawful interference with another's business and punishable under the common law of conspiracy.⁸ Injunctions have very frequently been granted against boycotts by federal courts.

In England the courts may punish a peaceable boycott only as a civil conspiracy. In the United States it may be punished as a criminal conspiracy. See page 8.

Alabama. Laws, 1903, no. 329, sec. 1-4. It is unlawful for two or more persons to conspire to prevent a lawful business, or for any person to go near or loiter about the premises of business in order to influence others not to deal with a person, firm or corporation, or to picket in order to interfere with a lawful business, or to print or circulate notice of a "boycott." boycott cards, stickers, dodgers or "unfair lists," or to publish that such action is contemplated. No blacklist, unfair list, or similar list can be punished because of any lawful act or decision of a judicial or public official. Penalty is fine not less than \$50 nor more than \$500, or imprisonment not over sixty days. General provisions against interference with employment and the use of intimidation are included in this statute.

Arizona. Pen. Code, 1901, sec. 170. General Conspiracy Law. Application doubtful.

Arkansas. Dig. 1904, sec. 5030. General law prohibiting interference with employment when under contract. Application doubtful.

California. Pen. Code, 1903, c. 289, sec. 1. No agreement to do an act in furtherance of a trade dispute shall be deemed criminal, be indictable as a criminal conspiracy or be enjoined when such act if committed by an individual is not punishable as a crime. Force or violence is, however, prohibited.

Yet in Jordahl v. Hayda et al. 1905, 82 Pac. 1079, it was held that boycotting is enjoined when there are acts of intimidation in threatening prospective customers and that it is not necessary to show actual exercise of physical force or violence.

Colorado. Acts, 1905, c. 79, sec. 1-5. It is a mis-

demeanor for any person to loiter about or parole streets, alleys, roads, highways, trails or places of business, to influence others not to deal with any person, firm or corporation, or to picket in order to interfere with or obstruct any lawful business, or to print or circulate notice of "boycott," boycott cards, stickers, banners, signs, or dodgers, or to publish the name of any judicial or public officer in any of the above manners because of any lawful act or decision. Penalty is fine not less than \$10 nor more than \$250 or imprisonment not over sixty days, or both. The statute includes provisions against intimidation and force.

Connecticut. Gen. St. 1902, sec. 1296. General statute against intimidation and threats to prevent interference in lawful action.

This statute covers boycotting. State v. Glidden, 1887, 8 At. 890.

Delaware. Rev. Code, 1893, p. 928. Prohibition of interference with employment in case of strikes on railroads. Application doubtful.

District of Columbia.4

Florida. Acts, 1893, c. 4144. General statute prohibiting conspiracy against workingmen.

Georgia. Pen. Code, 1895, sec. 119-126. It is a misdemeanor to hinder the engagement of a person in a lawful business by threats, violence, intimidation or other unlawful means.

Laws, 1901, no. 390, sec. 1-4. Statute against interference with employment.

⁴ No statute against boycotting.

Idaho. Ann. Code, 1901, sec. 4686. General conspiracy act. Application doubtful.

Illinois. Rev. St. 1905, c. 38, sec. 46. Two or more persons, or the officers or executive committee of any society, organization or corporation who issue any circular or edict to establish a so called "boycott" or blacklist. or who distribute any notices fradulently or maliciously intending to wrongfully and wickedly injure the person, character, business, employment or property of another, or who do an illegal act injurious to the public trade, health, morals, police or administration of public justice, or who prevent competition in letting out public contracts or who induce persons not to enter such competition, are guilty of conspiracy. Penalty is imprisonment in the state penitentiary not over five years, or fine not over \$2,000, or both.

A circular of a business association directing members not to deal with a certain person for alleged default toward another member is not actionable. Ulery v. Chi. Live Stock Exchange, 1894, 54 lll. App. 233.

- c. 38, sec. 158. General statute against intimidation by combinations.
- c. 18, sec. 159. Act against the intimidation of workmen.
- c. 38, sec. 160. Act against the entering of premises to intimidate.

Indiana. Ann. St. 1901, sec. 3312m-3312u. Any person, firm or association of persons agreeing to prevent any wholesale or retail dealer or manufacturer from selling to any dealer, mechanic or artisan, or any one who obeys such request, because said dealer, artisan or mechanic is not a member of a combination or

association, is guilty of conspiracy against trade. Such agreements are void in law. Fine not less than \$50 nor more than \$2,000, or imprisonment for not more than one year, or both. County prosecuting attorney is to prosecute violations. Damages may be granted.

Iowa. Code, 1897, sec. 5059. Conspiracy with the fraudulent or malicious intent wrongfully to injure the person, character, business, property or rights in property of another is prohibited. Application doubtful.

Kansas. Gen. St. 1905, sec. 2481. It is unlawful for any person or persons willfully or maliciously, by any act or by intimidation, to interfere or conspire to interfere with a lawful business. Application doubtful.

Kentucky. St. 1903, sec. 802-804. Prohibits the obstruction of railroads etc. by violence, intimidation and coercion. Application doubtful.

Louisiana. Rev. Laws, 1904, sec. 944. Law against intimidation of seamen.

Boycotting a hotel by refusing to buy from drummers who stay there is actionable for damages. Webb v. Drake, 1899, 52 La. Ann. 290.

A person can refuse dealing with another for any motive whatever, but cannot always influence another person to do the same for any motive. Graham vs. St. Charles St. R. Co. et al. 1895, 16 So. 806.

Maine. Rev. St. 1903, c. 124, sec. 9. General statute against intimidation in case of strikes of gas, telegraph, telephone, electric light, electric power or railroad corporations.

c. 128, sec. 20-21. General conspiracy act. The

statute includes provisions against intimidation, force and threats.

There can be a boycott without combination. Such a boycott grants a title to recover damages. Davis v. Starrelt, 1903, 97 Me. 568.

Maryland. Pub. Laws, 1904, art. 27, sec. 34. An act in furtherance of a trade dispute cannot lead to prosecution as a criminal conspiracy unless such act be punishable as an offense when committed by an individual.

Yet in My Maryland Lodge, no. 186, International Association of Machinists et al. v. Adt, 1905, 59 At. 721, the injunction of the lower court against threatening with a boycott and unfair list was continued.

Massachusetts. Rev. St. 1902, c. 106, sec. 11. General statute against intimidation.

A boycott with intent to injure another's business is an illegal conspiracy. Motive is the deciding element. Martell v. White et al. 1904, 60 N. E. 1085.

Michigan. Comp. Laws, 1897, sec. 11343. General statute against intimidation of employees.

A boycott is a form of coercion and is unlawful and enjoinable even though peaceful. Beck v. Ry. Teamsters' Protective Union, 1898, 118 Mich. 497.

Minnesota. Rev. Laws, 1905, sec. 1822. General statute against interference with employment and coercion of employees.

sec. 4869. Unlawful to conspire to interfere with a lawful trade on calling by force, threats or intimidation.

sec. 5140. General statute against the use of coercion.

sec. 5168. A statute against trusts and combinations so extended that it may effect trade boycotts.

Compound boycott enjoined. Legality of unfair list depends upon whether it portends injury to the plaintiff so as to make it a boycott. Grey et. al. v. B. T. C. et al. 1903, 97 N. W. 663.

Mississippi. Code, 1892, sec. 1006. General conspiracy act.

sec. 1270. It is unlawful for two or more persons who willfully and maliciously combine or conspire to obstruct or impede, by any act or any means of intimidation, the regular operation of any railroad.

Acts, 1898, c. 70, sec. 1. General statute against intimidation of employees.

Missouri. Rev. St. 1899, sec. 2155. General statute against intimidation of employees and interference with employment.

Boycott circular is not illegal. Freedom of speech and press provided for in the Missouri constitution. Marx & Hass Jeans Clothing Co. v. Watson et al. 1902, 67 S. W. 391.

Primary boycott is legal. Compound boycott is an illegal conspiracy and is enjoinable. Walsh v. Assoc. Master Plumbers of St. Louis et al. 1902, 71 S. W. 455.

Montana. Pen. Code, 1895, sec. 320. General conspiracy act. Application doubtful.

Nebraska.5

Nevada. Comp. Laws, 1900, sec. 4751. General conspiracy act. Application doubtful.

New Hampshire. Pub. St. 1901, c. 266, sec. 12. It is unlawful for any person to interfere or endeavor to interfere in any way in order to injure another in his property or lawful business.

⁵ No statute against boycotting.

New Jersey. Laws, 1898, c. 235, sec. 37. General Application doubtful. conspiracy act.

It is actionable to attempt to ruin another's business by inducing wholesale houses not to sell him goods. Van Horn v. Van Hora, 1890, 20 At. 485.

Trades council is restrained from issuing circulars calling on the members of unions and the public to cease buying and advertising in the boycotted paper. Barr v. Essex Trades Council, 1894, 101 At. 881.

Laws, 1903, c. 257, sec. 63. Prohibits interference with railroad operation by strikers.

New Mexico.8

New York. Parker's Crim. and Pen. Code, 1904, c. 168, par. 5. If two or more persons conspire to hinder another in the exercise of lawful business or in doing any lawful act by force, threats or intimidation, they are guilty of a misdemeanor.

Interference by outside parties and attempts to enforce a boycott against an employer, come within this statute

a boycott against an employer, come within this statute and common law as well. Punishable as a misdemeanor and actionable for damages. Old Dominion Steamship Co. v. McKenna et al. 1887, 30 Fed. 48.

Compound boycott unlawful and liable to damages. Ryan v. Burger & Hower Brewing Co. 1891, 12 N. Y. Sup. 660. Refusal to sell to dealers who will not maintain a uniform price is not an actionable boycott. Parks & Sons Co. v. Nat. W. D. A. 1903, 175 N. Y. 1.

Laws, 1903. c. 349. It is a misdemeanor to willfully deprive a member of the national guard of his employment or to obstruct him or his employer in respect to his trade, business or employment, because said guard is such a member.

North Caroling. Unfair list not actionable. Court implies that a boycott would be actionable. **Implies**

No statute against boycotting.

that an unfair list is not a boycott. State v. Van Pelt, 1904, 49 S. E. 177.

North Dakota. Const. 1889, art. 1. Interference with employment is a misdemeanor.

Pen. Code, 1899, sec. 7037. Statute prohibiting conspiracy against workingmen.

sec. 7660-2. Any person who, by force, threats or intimidation, prevents or endeavors to prevent another from employing any person, or compels a change of the mode of business, an increase or decrease of the number of men, or the rate of wages or time of service, is guilty of a misdemeanor. Intimidation of employees is prohibited.

Ohio.

Union held liable in case of a general boycott declared and partly carried out. Parker v. Bricklayers' U. No. 1, 1899, 21 Wkly. L. Bul. 223.

Union injuring business by notices to customers that dealing with the employer will result in themselves being boycotted is illegal. Moores & Co. v. Bricklayers' U. No. I, et al. 1890, 23 Wkly. L. Bul. 48.

Oklahoma. Ann. & Rev. St. 1903, sec. 2643. Statute against intimidation of employees.

Oregon. Ann. Code & St. 1902, sec. 1971. Any person who, by force, threats or intimidation, prevents or endeavors to prevent the continuance of a man's service or the acceptance of new service by him, or who circulates false written or printed statements, or is concerned in such circulation, to prevent a person from employing another, or to compel him to employ another, to alter his mode of business, or to limit or increase the number of employees, their wages or time of service, is guilty of a misdemeanor.

A boycott must be "presistant, aggressive and virulent" before an injunction is proper and available. Longshore Printing Co. v. Howell, 1894, 38 Pac. 547.

Pennsylvania.

The maintenance of a boycott by the use of injurious and threatening acts that caused the plaintiff's business to fall off greatly is not protected by the law protecting unions, but the parties thereof may be enjoined. Brace v. Evans, 1888, 5 Pa. Co. C. 163.

Primary boycott is not unlawful coercion. Buchanan v. Barnes, 1894, 28 At. 195.

Porto Rico. Pen. Code, 1902, sec. 465. against intimidation of employees and interference with employment. Application doubtful.

Rhode Island. Gen. Laws, 1806, c. 278, sec. 8. General statute against intimidation of employees.

c. 270, sec. 45. It is unlawful for any person to willfully and maliciously or mischievously injure or destroy property, or hinder a lawful busines.

An agreement to withdraw patronage from any dealer selling supplies to others than master plumbers is not evidence that plumbers conspired to ruin complainant's business. Macauley v. Tierney, 1895, 33 At. 1.

South Carolina. Laws, 1902. no. 574, sec. 5. combination "boycotting" any person or corporation for dealing with one not a member of the combination is guilty of conspiracy to defraud. Applicable to trade boycotts only.

South Dakota. Pen. Code, 1903. sec. 757-8. ute against intimidation of employers and employees.

Tennessee.

Maliciously to threaten to discharge employees if they trade with a third party is not actionable. Threats and intimidation to break up a man's business is actionable. Payne v. Western Ry. Co. 1888, 13 Tenn. 521.

Texas. Pen. Code, 1895, art. 309, 324. General

statute against intimidation of employees and interference with employment.

art. 600. Intimidation of employees prohibited.

art. 806-807. Intimidation of railroad employees prohibited.

Laws, 1903, c. 94, sec. 3, par. 2. Any two or more persons, firms, corporations or associations who agree to boycott any person, firm, corporation or association for buying from or selling to any other person, firm, corporation or association, are guilty of a conspiracy in restraint of trade. Such a contract is void. Penalty is \$50 per day of violation or imprisonment not less than one nor more than ten years.

Laws, 1808, sec. 4156. General conspiracy law. Application doubtful.

Laws, 1905, c. 16. Threats to destroy property or do bodily injury in order to prevent any person from entering or remaining in the employ of any company, corporation or individual, is a misdemeanor.

Vermont. Laws, 1902, c. 220, sec. 5041-2. Law against intimidation of employees.

Boycotting is a criminal conspiracy under the common The intimidation statute is mentioned.

Stewart, 1887, 59 Vt. 273.

"It is clear that everyone has a right to withdraw his own patronage when he pleases, but it is equally clear that he has no right to employ threats or intimidation to divert the patronage of another." What one man may do may not always be done by a combination. Actual damages granted. Boutwell et al. v. Marr et al. 1899, 42 At. 607.

Virginia.

A boycott warrants a conviction for conspiracy. Crump v. Commonwealth, 1888, 84 Va. 927.

Washington. Code, 1902, sec. 6518. Prohibition

of intimidation in the case of coal mines. Application doubtful.

A compound boycott was enjoined under the common law. Jensen v. Cooks and Waiters Union of Seattle et al. 1905, 81 Pac. 1069.

West Virginia. Code, 1899, p. 1053, sec. 14. Interference with employment in coal mines probibited.

A boycott is a malicious and wanton interference, and is illegal and actionable. W. Va. Transportation Co. v. Standard Oil Co. 1902, 88 Am. St. Rep. 895.
W. Va. Dig. 1902, vol. 1, p. 663. "No statute by name making boycotting an offense. Whether it is indictable under the statute against conspiracies is a question. The usual remedy is by injunction."

Wisconsin. Rev. St. 1898, sec. 4466a. "Any two or more persons who shall combine, associate, agree, mutually undertake together for the purpose of willfully or maliciously injuring another in his reputation, trade, business or profession by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500."

sec. 4466c. Prohibition of interference with employment.

sec. 4568. Conspiracy. "Any person guilty of a criminal conspiracy at common law shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500; but no agreement, except to commit a felony upon the person of another or to commit arson or burglary, shall be deemed a conspiracy or punished as such unless some act, beside

such agreement, be done to effect the object thereof by one or more of the parties of such agreement." Application doubtful.

Wyoming.

^{&#}x27;No statute against boycotting.

SUMMARY

LEGALITY OF ROYCOTTS

The compound boycott

The compound boycott, in which third parties are boycotted or threatened with a boycott, is almost universally declared illegal, both under common and statutory law. Courts usually, though not always, have reference to this form of boycott when they use the term "boycott."

The primary boycott

The primary boycott, in which third parties are not attacked or threatened, is of doubtful legality. Many courts uphold its legality in the absence of int midation, but others hold the opposite. Generally if these boycotts portend willful and malicious injury to the boycotted party, they are illegal; if they portend benefit to the boycotters, they are legal. This is, however, not a universal rule. The primary trade boycott is the one most frequently upheld by the courts.

The unfair list

The legality of the unfair list has seldom been tested in the courts.

The court of appeals continued an injunction of the lower court against threatening an unfair list. My Maryland lodge, No. 186, et al. v. Adt. 1905, 59 At. 721.

The legality of the unfair list depends upon whether or not it portends injury to the plaintiff so as to make it a boycott. Grey et al. v. Building Trades Council et al. 1903, 97 N. W. 663.

It was held that an unfair list is not actionable. State v. Van Pelt, 1904, 49 S. E. 177.

Alabama has a statute which declares the unfair list illegal.

The fair list

The fair list has nowhere in the United States been declared illegal and is not legally a boycott.

The union label

The union label is legal. The great majority of the states and territories have statutes expressly legalizing and protecting it. Legally it is not a boycott.

STATUTES AGAINST BOYCOTTING

Picketing

Certain states have statutes definitely prohibiting picketing and loitering about to interfere with a lawful business. These laws affect boycotting inasmuch as they prohibit practices which sometimes accompany boycotts.

See Ala. and Col.

Conspiracy against workmen

In eight states there are laws prohibiting conspiracy against workmen. These affect some loycotts by reaching a practice which sometimes accompanies a boycott. The general conspiracy laws of some of the states are of the same nature.

See Fla., Ga., Ill., Kan., Minn., Miss., N. Y. and N. D.

Intimidation

Many states and territories have statutes against the general use of intimidation, force, coercion and violence. While these statutes, under the interpretation of some courts, do not affect all boycotts, they cover at least those in which there is manifest intimidation. They reach some peaceful boycotts, as some courts hold that a peaceful boycott is in itself a form of coercion.

Beck v. Ry. Teamsters' Protective Union, 1898, 118 Mich.

See intimidation statutes of Ala., Conn., Ga., Ill., Ky., Me., Mass., Mich., Minn., Miss., Mo., N. H., N. Y., N. D., Okla., Ore., P. R., R. I., S. D., Tex., Utah, Vt., and Wash.

Interference with employment

There are twenty states and territories prohibiting interference with employment. These necessarily affect the successful determination of many boycotts to some extent.

See Ala., Ark., Conn., Del., Ga., Ill., Kan., Ky., La., Miss., Minn., N. Y., N. J., N. D., Ore., Pa., R. I., W. Va., Utah, and Wis.

General statutes

About twenty states and territories have statutes not containing the term "boycott," but which may be fairly interpreted as prohibiting boycotting.

See Ala., Conn., Fla., Ga., Me., Mass., Mich., Minn., Miss., Mo., N. H., N. Y., Okla., Ore., S. D., N. D., Tex., Utah, Vt., and Wis.

Prohibition of boycotting in name

Certain states have statutes which prohibit boycotting as such under the name "boycotting."

See Ala., Col., Ill., Ind., S. C., and Tex.

COURT INTERFERENCE

Common law

In numerous states the courts proceed under the common law of conspiracy. This may either result in punishment against criminal or against civil conspiracy. The common law doctrine depends largely upon whether or not the intent is willful and malicious.

Illegal acts accompanying boycotts

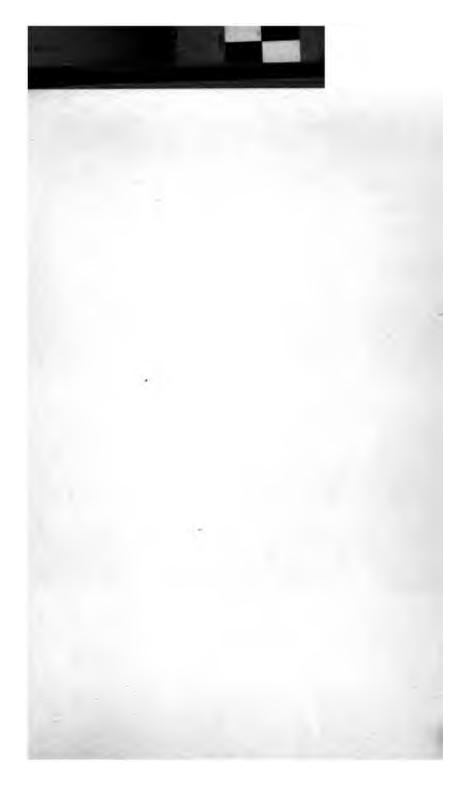
Whenever there is intimidation, force, coercion, threats or violence, the courts may proceed against the illegal act accompanying the boycott, and may thus check the boycott to a certain degree even in the absence of both statutory and common law provisions against the lovcott itself.

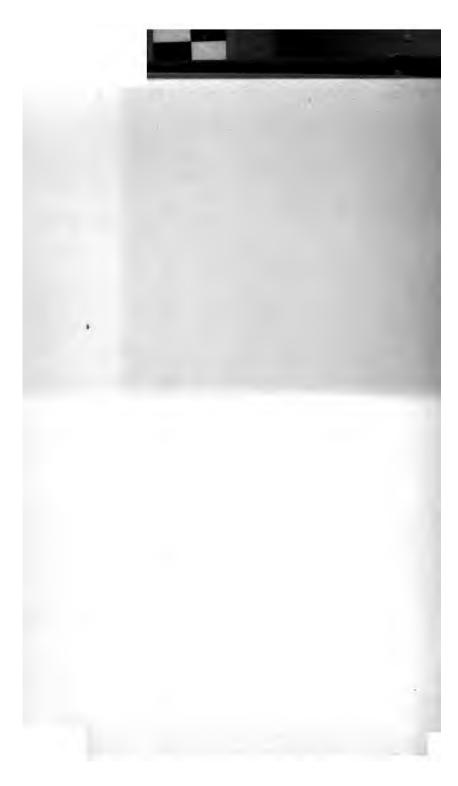
Injunctions

The most frequent remedy of the courts is the injunction. The compound boycott is generally enjoined when adequate facts are shown; the primary boycott is sometimes enjoined when malicious intent and combination are shown; the unfair list, whose legality is as yet a much disputed matter, was enjoined in My Md. Lodge, No. 186. et al. Adt. 1905, 59 At. 721.

^{&#}x27;S. C. statute applies only to trade boycotts.

^{*}See p. 8 for the law of conspiracy.









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WISCONSIN FREE LIBEARY COMMISSION LEGISLATIVE REFERENCE DEPARTMENT COMPARATIVE LEGISLATION BULLETIN No 10

BLACKLISTING

GROVER G. HUEBNER

MADISON, WISCONSIN NOVEMBER, 1996 This bulletin will be found especially timely because of the great agitation over labor legislation. It is a companion bulletin to that upon "Boycotting" by the same author.

This bulletin and the one on "Boycotting" will be found useful both to labor interests and employers as no handy short statement of this kind now exists in America.

CHARLES MCCARTHY Legislative Reference Department Θ

BLACKLISTING

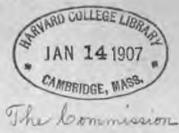
GROVER G. HUEBNER

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Prepared with the co-operation of the Political Science

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CONTENTS

	Page
REFERENCES	. 3
DEFINITIONS	. 5
FORMS OF BLACKLISTING	. 5
Blacklist	. 5
Clearance card	. 6
Whitelist	. 6
LAWS AND JUDICIAL DECISIONS	7
Foreign countries	. 7
United States	. 8
SUMMARY	19
LEGALITY	19
Remedies	20
Protection of unions	. 20
False charges	20
Interference with employment	. 21
Truthful statement furnished	21
Prohibition of blacklisting in name	21



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Vol. 5. American blacklisting laws, p. 141. Vol. 16. Foreign blacklisting laws, p. 171. Vol. 19. General explanation of the problem, p. 892-952.



DEFINITIONS

Ohio. A "blacklist" is defined to be a list of persons marked out for special avoidance, antagonism, and enmity on the part of those who prepare the list or those among whom it is intended to circulate; but it is most usually resorted to by combined employers who exchange lists of their employees who go on strikes, with the agreement that none of them will employ the workmen whose names are on the lists. Mattison v. Lake Shore & M. S. Ry. Co. 1895, 3 Ohio Dec. 526.

Texas. Acts, 1901, c. 99, sec. 4. "He is guilty of blacklisting who places, or causes to be placed, the name of any discharged employee, or any employee who has voluntarily left the service of any individual, firm, company, or corporation on any book or list or publishes it in any newspaper, periodical, letter or circular, with the intent to prevent said employee from securing employment of any kind with any other person, firm, corporation or company, either in a public or private capacity."

FORMS OF BLACKLISTING

Blacklist

This is the blacklist above defined, and is the practice legally known as "blacklisting."

Clearance card

This is a written statement given to employees upon leaving employment and is sometimes used as a means of blacklisting. The instrument, as such, is not recognized as blacklisting by the courts.

Whitelist

This term refers to the practice of having employer's associations register the employees of all the members and secure a history of each one. The history is sent to the members when they desire to hire additional emloyees. It is sometimes known as the "negative blacklist."

LAWS AND JUDICIAL DECISIONS

Foreign countries

England. Conspiracy & Protection of Property Act. 38 and 39 Vic. c. 86. The common law is so modified that a combination to do, or procure to be done, any act in contemplation or furtherance of a trade dispute between employers and workmen is not indictable as a conspiracy if such act when committed by one person is not a crime punishable by imprisonment. Courts have held that this does not prevent punishment as a civil conspiracy (Quinn v. Leathem, 1901, 17 T. L. R. 749) With this modification, England follows the common law in dealing with blacklists.

Appeal dismissed because there was no other motive than self interest. Jenkinson v. Neild, 1892, 8 T. L. R. 540.

Damages granted because the purpose was to injure. Injunction made permanent. Trollope v. London Bld g Trades Fed. 1895, 72 L. T. 342.

Fed. 1895, 72 L. T. 342.

The legality of the blacklist depends upon its motive. Quinn v. Leathem, 1901, 17 T. L. R. 749; Bulock v. St. Anne's Master Builders, 1902, 19 T. L. R. 27.

France. In 1889 the obligatory features of the certificate of employment were suppressed. By art. 3, Laws, 1889, all persons, with the exception of those

in a few industries, may, at the end of their services, exact a certificate containing exclusively the date of their coming and going and the kind of work at which they have been employed.

Germany.1 In Germany ute law declare blacklisting of employment the emi workman a certificate of uisnamal. There is a heavy penalty against placing any tificates which convey kr pressed.

the courts and statgal. Upon cessation required to give the s or marks on the cerge not therein ex-

United States

Comp. St. 1901. Every employer engaged in interstate or foreign transportation, except masters of vessels as defined in sec. 4612 Rev. St. of U. S. "who shall, after having discharged an employee, attempt or conspire to prevent such employee from obtaining employment, or who shall, after the quitting of an emplovee, attempt or conspire to pervent such employee from obtaining employment, is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof in any court of the United States of competent jurisdiction in the district in which such offense was committed, shall be punished for each offense by a fine of not less than \$100 and not more than \$1.000."

Alabama. Code, 1897, c. 192, sec. 5511. prohibiting interference with employment.

Acts, 1903, no. 329, sec. 5. It is unlawful for any person, firm or corporation to maintain a "blacklist"

¹ Authority of the consul of Cermany at Philadelphia, Oct., 1906. Also see U. S. Ind. Com. Rpt. vol. 16, p. 171.

or to notify any other firm or corporation that any person is blacklisted, or to use any similar means to prevent employment. Fine not less than \$50 nor more than \$500, or imprisonment not over sixty days.

Arizona 3

Arkansas 4

California.5

Colorado.6 Acts, 1905, c. 79, sec. 4. It is a misdemeanor for any employer to maintain a "blacklist" or notify other employers that any workman is blacklisted in order to prevent his employment. It is not unlawful to make a true statement upon application of the employee or the prospective employer. not unlawful to maintain or publish a list as to persons' financial standing. Penalty is fine not less than \$10 nor more than \$250, or imprisonment not longer than sixty days, or both.

Connecticut. Gen. St. 1902, sec. 1299. "Every employer who 'blacklists' an employee with the intent' to prevent him from procuring other employment is to be fined not more than \$200"

Delaware.8

Florida. Acts, 1893, c. 4144, sec. 1. General statute prohibiting conspiracy against workingmen, to prevent employment.

Acts, 1893, c. 4207, sec. 1-5. No railroad company or other corporation or any person, agent or employee of such corporation is to prevent the employment of a

No statute against blacklisting.

See statute against Fulse charges, p. 20
See Protection of unions, p. 20
See Protection of unions, p. 20
See Protection of unions, p. 20

See Protection of union: , p. 20
 No statute against blacklisting.

discharged employee, by any work, writing, sign or other means. Fine not less than \$100 nor more than \$500; and damages are also to be granted. A truthful statement may be made. If a truthful statement of the cause of discharge is not furnished within ten days upon request of the discharged employee, then no such statement can be made thereafter. A company having received a "blacklist" is to furnish the same to the employee upon request. The law is to apply to railroad companies or corporations under the same general management or contract, but having separate divisions.

Georgia. Code, 1895, sec. 119. Statute prohibiting organization to prevent the employment of any person.

Code, 1895, sec. 124. Conspiracy to prevent employment is a misdemeanor.

Code, 1895, sec. 1873. Blacklisting is prohibited in name, in case of corporations, or agents or employees thereof. A truthful statement of cause of discharge is to be furnished upon request.

An act to require certain corporations to give to their discharged employees or agents the cause of removal or discharge is unconstitutional. Wallace v. Ga. N. Ry. Co. 1894, 22 S. E. 579.

A blacklist is declared unlawful when a false report is circulated. Willis v. Muscagee Co. 1904, 48 S. E. 177.

Idaho.9

Illinois. Rev. St. 1905, c. 38, sec. 46. If any two or more persons conspire together, or the officers or executive committee of any society, oganization or corporation issue or utter any circular or edict as the

[•] See Protection of unions, p. 20

action or instruction to its members, or any other persons, societies, organizations or corporations for the purpose of establishing a so-called boycott or blackist, or distribute any written or printed notice, with the fraudulent or malicious intent wrongfully and wickedly to injure the person, character, business, employment or property of another. they are guilty of a conspiracy. Penalty is imprisonment in the penitentiary not exceeding five years or fine not exceeding \$2,000, or both.

The instruments of railroads known as "clearance cards" are not illegal. McDonald v. I. C. R. Co. 1900, 58 N. E. 463.

Indiana. Ann. St. 1901, sec. 7076. Prevention of employment is unlawful.

sec.7077. It is unlawful for any railroad company or other company, partnership or corporation, to "blacklist" discharged employees, or by work, writing or other means to prevent employment of any employee. Compensatory and exemplary damages are to be granted. If the employer does not furnish a true statement upon request of the employee, no such statement can be made thereafter at any time.

This statute applies only to discharged employees. The section relative to employees voluntarily leaving employment is unconstitutional, as it is not expressed in the title of the act. Wabash R. Co. v. Young, 1904, 69 N. E. 1003.

Ioua. Code, 1897, Supp. 1902, sec. 5027-28. No person, agent, company or corporation can by word or writing prevent discharged employees from securing employment. Truthful statement may be furnished upon request. Penalty is fine not less than \$100 nor more than \$500. Damages are granted. In case of agents of any railroad company, partnership or cor-

poration, treble damages are granted if the employee is prevented from obtaining employment.

Kansas.¹⁰ Gen. st. 1905, sec. 4026–30. No employer may by word, sign or writing of any kind whatsoever attempt to prevent the employment of a discharged employee. A true statement of the cause of discharge is, however, to be furnished upon request of the employee. Penalty is fine of \$100 for each offense and thirty days imprisonment. Damages equal to three times the sum of the injury and reasonable attorney's fees are granted in addition.

Kentucky.

Railroads are liable to discharged employees for false entry upon records when such records are in any way communicated to other railroads, and the employees have thereby been prevented from obtaining employment. There must be an overt act. Hundly v. Louisville & N. R. Co. 1898, 48 N. W. 429.

Blacklisting does not make a person liable unless there is coercion or deception. Baker v. Sun Life Insurance Co. 1901, 64 S. W. 967.

Louisiana.11

Maine. Rev. St. 1903, c. 127, sec. 21. Any employer, employee, or other person, who by threats of injury, intimidation or force, alone or in combination with others, prevents any person from entering into, continuing in or leaving the employment of any person, firm or corporation, is to be punished by imprisonment for not more than two years, or by fine not exceeding \$500.

Maryland.12

Nee Protection of unions, p. 20
 No statutes against blacklisting.
 No statutes against blacklisting.

Massachusetts. 13

Employer sent names of strikers to other like corporations and an agreement was made not to employ them unless they returned to the defendant at his wages. Held entitled to relief in equity. Worthington v. Waring, 1892, 34 Am. St. R. 294.

Michigan. Comp. Laws, 1897, c. 315, sec. 11343. General statute against intimidation, providing that no person shall in any way, without legal authority. molest any workman in the quiet and peaceful pursuit of his lawful avocation.

Minnesota.14 Gen. Laws, 1905, sec. 5097. misdemeanor for two or more corporations or employers to agree to combine or confer together to prevent a man's employment by circulating blacklists or by any means. Unlawful for a corporation or company, or agent or employee thereof to blacklist discharged employees, or by word or writing hinder an employee from obtaining employment who has voluntarily left (Act was enacted in 1895, c. 174, sec. 1-6)

This act is constitutional. State ex rel. Schaffer v. Justus, 1902, 88 N. W. 759.

Mississippi. Ann. Code, 1802, sec. 1006, no. 5. General statute against interference with employment and conspiracy against workmen. Application to blacklisting is doubtful.

Misssouri.15 Rev. St. 1800, sec. 2166. Every person who sends, delivers, makes, or causes to be made, sent or delivered, or who parts with any paper, letter, or writing, signed or unsigned, or publishes a false statement, to prevent the employment of a person, or

¹³ See Protection of unions, p. 20 14 See Protection of unions, p. 20

¹⁶ See False charges, p. 20

who "blacklists" a person in any way to prevent employment or to cause discharge, is guilty of a misdemeanor. Fine not over \$1,000 or imprisonment, or both.

Montana. Ann. Code, 1895, sec. 3390-92. "Black-listing" is a penal offense and punishable as such. Damages are granted. A truthful statement is not prohibited. If such statement is not furnished upon request of the employee, it cannot be furnished thereafter to any person.

Pen. Code, sec. 656. Violation of the above statute is a misdemeanor.

Nebraska.

A blacklist is a conspiracy and includes an abstract of delinquent debtors sent by a commercial association to other merchants branding the debtors as unworthy of credit. Damages are granted. Master v. Lee, 1896, 39 Neb. 574.

Nevada.¹⁶ Comp. Laws, 1900, sec. 4982. Any person, association, company, or corporation or agent, preventing any employee from getting employment is guilty of a misdemeanor.

Acts, 1905, c. 150, sec. 1-3. Any corporation, association, company, or individual who "blacklists," or publishes or causes to be blacklisted any discharged employee with intent to prevent his employment, is guilty of a misdemeanor. Fine not less than \$50 nor more than \$250, or imprisonment not less than thirty nor more than ninety days, or both. A truthful statement is permitted on application. Such statement cannot be used as cause for a libel suit.

New Hampshire. Rev. St. and Sess. Laws, 1901,

¹⁶ See Protection of unions, p. 20

c. 266, sec. 12. General statute against intimidation of employees and interference with workman.

New Jersev.17

New Mexico.18

New York.19

A manufacturer in contract with wholesale dealers of medicines to handle their goods at uniform prices supplied the dealers with a list of those who cut prices. This is not unlawful. Park & Sons Co. v. N. W. D. A. 96 Am. St. Rep. 578.

North Carolina.20

North Dakota. Const. art. 1, sec. 23. Any malicious interference with the obtaining of employment is a misdemeanor.

art. 17, sec. 212. "The exchange of blacklists between corporations shall be prohibited.

Rev. Code, 1800, sec. 7041-2. It is a misdemeanor for any person, corporation or agent thereof to maliciously interfere with the obtaining or holding of employment. It is a misdemeanor to exchange or furnish a "blacklist."

Ohio.21 Ann. St. 5th ed. pt. 2, Civ. Code, sec. 3365-20. Railroads are to furnish discharged employees with a written statement of the cause of the discharge..

Failure to furnish such statement does not make the company liable. Crall v. Toll. & O. C. Ry. Co. 1893, 7 C. C.

Damages are granted in case of a combination between railroads to maliciously prevent employment. Mattison v. Lake Shore & M. S. R. Co. 1895, 3 Ohio, Dec. 526.

See Protection of unions, p. 20
 No statute against blacklisting.
 See Protection of unions, p. 20
 No statute against blacklisting. 21 See Protection of unions, p. 20

Oklahoma. Rev. Ann. St. 1903, sec. 2658-9. It is a misdemeanor for any company, corporation or individual to "blacklist," or require a letter of relinquishment from any employee, with the intent to prevent his further employment. Fine not less than \$100 nor more than \$500. Damages are to be granted.

Oregon.22 Acts, 1903, p. 137, sec. 1. It is a misdemeanor for any corporation, company or individual to "blacklist" or publish any blacklist to prevent the employment of a discharged employee. Fine not less than \$50 nor more than \$250, or imprisonment not less than thirty nor more than ninety days, or both.

Pennsylvania,23

Porto Rico.24

Rhode Island. Gen. Laws, 1896, c. 279, sec. 45. General statute against interference with lawful employment.

South Carolina.

Employees could not collect, as they were receiving wages from their union while on strike. Bradley v. Pierson, 1892, 24 At. R. 65.

Rev. St. 1903, Pen. Code, sec. 758. South Dakota. Statute against interference with employment which may be interpreted to cover blacklisting.

Tennessec.25

Texas. Acts, 1901, c. 99, sec. 1-4. It is a misdemeanor for any corporation, company, or individual to "blacklist" or cause to be blacklisted any discharged employee, with the intent of preventing his obtaining eni-

 ²² See Protection of unions, p. 20
 ²³ See Protection of unions, p. 20
 ²⁴ See Protection of unions, p. 20
 ²⁵ No statute against blacklisting.

ployment. Fine not less than \$50 nor more than \$250, or imprisonment not less than thirty nor more than ninety days, or both. True statement may be made upon application of the employee or prospective emplover.26

Utah. Const. art. 12, sec. 19. Any malicious interference with employment of any employee is a crime.

Rev. St. 1898, sec. 1340-41. Any company, corporation or individual who "blacklists" or causes to be blacklisted any employee to prevent his employment is guilty of a felony. Fine not less than \$500 nor more than \$1,000 and imprisonment in state prison not less than sixty days nor more than one year.

L'ermont.27

Virginia. Code, 1904, sec. 3657c. It is a misdemeanor for any corporation, manufacturer, manufacturing company, or agent thereof, to maliciously and willfully prevent, or attempt to prevent by word or writing, directly or indirectly, the employment of a discharged employee. Fine not less than \$100 nor more than\$500. A truthful statement may be made upon application.

Washington. Code, 1902, sec. 5992. "Blacklisting" is prohibited in terms. It is a misdemeanor and is punishable by fine of not less than \$100 nor more than \$1,000, or imprisonment for not less than ninety days nor more than one year, or both.

West Virginia.28

Wisconsin.29 Rev. St. 1898, c. 182, sec. 4466b.

See p. 16 for definition in Texas Law.
 No statute against blacklisting.
 No statute against blacklisting. 39 See Protection of unions, p. 20

"Any two or more persons, whether members of a partnership or company or stockholders in a corporation, who are employers of labor, who shall combine or agree to combine for the purpose of preventing any person seeking employment from obtaining the same, or for the purpose of procuring or causing the discharge of any employee by threats, promises, circulating blacklists or causing the same to be circulated, or who shall, after having discharged any employee, prevent or attempt to prevent such employee from obtaining employment with any other person, partnership, company or corporation by the means of the aforesaid, or shall authorize, permit or allow any of his or their agents to blacklist any discharged employee or any employee who has voluntarily left the service of his employer, or circulate a blacklist of such employee to prevent his obtaining employment under any other employer, or shall coerce or compel any person to enter into an agreement not to unite with or become a member of any labor organization as a condition of his securing employment or continuing therein, shall be punished by a fine of not more than \$500 nor less than \$100, which fine shall be paid into the state treasury for the benefit of the school fund." Truthful statement may be made upon application of the employee, the prospetive employer or any bondsman or surity. Such information cannot be given with intent to blacklist or prevent employment. employer may keep a record for his own information.

Wyoming.30

³⁰ No statute against blacklisting.

SUMMARY

LEGALITY

Though there are more statutes directly aimed at blacklisting than at boycotting, the courts do not recognize the illegality of blacklisting as clearly. In the absence of special statutes, the common law doctrine of malicious and willful intent to do injury may be applied. Wherever there is a conspiracy, the common law of civil conspiracy may be applied as it is in England,³¹ or even extended so as to demand punishment as a criminal conspiracy. American courts do not, however, uniformly adopt this rule. Especially is this true in the case of railroad clearance cards. Courts have held them to be a lawful instrument.

McDonald v. Ill. C. R. Co. 58 N. E. 463; C. C. C. & St. L Ry. Co. v. Jenkins, 1898, 174 Ill. 398.

The legality of the "whitelist" has not been determined.

³¹ See p. 6.

REMEDIES

Protection of unions 82

Seventeen states and territories and the federal government have statutes prohibiting the exaction from workmen of agreements that they will not be members of unions. These statutes strike at one of the important causes of blacklisting.

· Compare the laws of: Cal. Pen. Code, 1903, sec. 679.

Col. Acts, 1897, c. 50, sec. 1-2. Conn. Gen. St. 1902, c. 82, sec. 1297.

Idaho Codes, 1901, sec. 4858-9. Ill. Rev. St. 1905, c. 38, sec. 46. Ind. Ann. St. 1901, sec. 2302.

Kan. Gen. St. 1905, sec. 4039, 33

Mass. Rev. Laws, 1902, c. 106, sec. 12. Minn. Rev. Laws, 1905, sec. 5097.

Nev. Acts, 1903, c. 111, sec. 1-2. N. J. Gen. St, 1895, p. 1905, sec. 45-47. N. Y. Parker's Crim. & Pen. Code, sec. 17la.

N. 1. Farker's Crim. & Pen. Code, sec. 171a Ohio Ann. St. pt. 2, Civ. Code, sec. 3364-68. Orc. Acts, 1903, c. 137, sec. 1. Pa. Dig. 1893-1903, p. 851, sec. 5. P. R. St. & Code, 1902, sec. 553. Wis. Rev. St. 1898, c. 182, sec. 4466.34 U. S. Comp. St. 1901, Title, 56c, sec. 10.

False charges

Arkansas and Missouri have statutes prohibiting the making of false charges against railroad emplovees.

Ark. Dig. 1904, sec. 6655. Mo. Rev. St .1899, sec. 2165.

³² These laws are difficult to enforce and sometimes declared unconstitutional. The Mo. law was declared unconstitutional in State v. Julow, 1895, 29 Lawyers Rep. Ann. 257.
Laws of a similar nature are those preventing discharge or hindrance in employment because of having engaged in a strike. Minn. St. 1905,

sec. 1822.

³³ Unconstitutional. Brick & Title Co. v. Perry, 1904, 76 P. 848.

³⁴ Unconstitutional. State v. Kreutzberg, 1902, 90 N. W. 1098.

Interference with employment

Eight states have general statutes against interference with employment, which may be interpreted to prohibit blacklisting.

See Ala., Ga., Ind., Maine, Mass., N. H., R. I., and S. D. Florida and Mississippi have statutes of this nature prohibiting conspiracy against workmen.

Truthful statement furnished

Though without a blacklisting law, Ohio provides that, upon application, railroads must furnish a truthful statement of the cause of the discharge to the employee.

Prohibition of blacklisting in name 35

Twenty-one states and territories have enacted statutes, prohibiting blacklisting as such under the term blacklisting.

See Ala., Col., Conn., Fla., Ga., Ill., Ind., Iowa, Kan., Minn., Mo., Mont., Nev., N. D., Okla., Ore., Tex., Utah, Va., Wash, and Wis.

Of these, fourteen extend the statutes to cover "any person" guilty of blacklisting.

See Ala., Col., Conn., Kan., Mo., Mont., Nev., Iowa, Okla..³⁶ Va., Ore., Tex., Utah, and Wash.

Two statutes apply only to two or more persons blacklisting.

See Ill., Wis.

Five apply to railroads and other corporations.

See Ind.37, Fla., Ga., N. D., Minn.38

For Federal law see p. 8
 Corporations, manufacturers, manufacturing cos. or agent or attor-

ney thereof.

78 Railroads, companies, partnerships or corporations.

79 Corporations or companies or agent or employee thereof. The general statute applies to two or more corporations or employers.

BLACKLISTING

T.c. I these statutes prohibit the blacklisting of disch. d employees,

See . , Ga., Ind., 19 Iowa, Kan., Mont., Ore., Nev., Tex. and Va

Eleven of them apply to any employee.

See Ala., Col., Conn., inn., Mo., N. D., Okla-Utah., Wash., Wis.

Nine⁴⁰ permit the of truthful statements upon application of t parties.

See Col., Fla., Ind., Io , , Mont., Nev., Tex., and Wis.

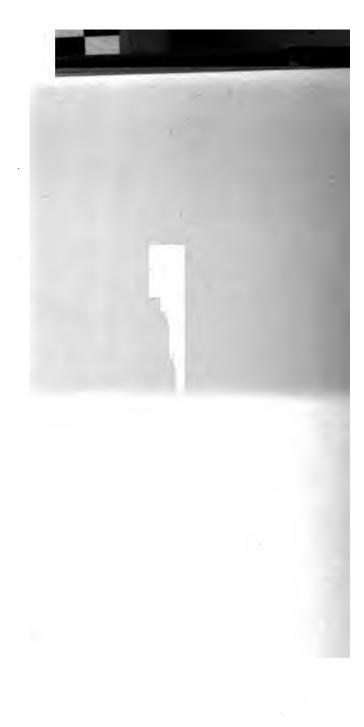
Provision applying to employees voluntarily leaving is unconstitutional.
 In Georgia this was compulsory but was declared unconstitutional.
 Wallace v. Georgia N. Ry. Co. 1894, 22 S. E. 579.

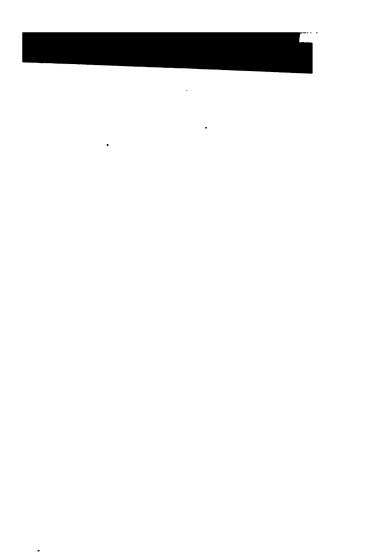
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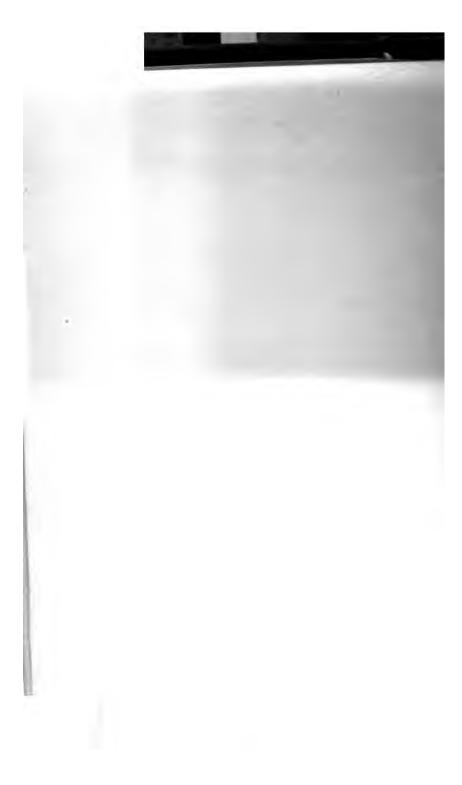
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INTRODUCTION

In the legislature of 1907 the following bills and resolutions relating to the initiative and referendum were introduced: Assembly bills 326, 357, 443; Senate bills 135, 177; Assembly joint resolutions 33, 37, 84; Senate joint resolution 17.

A handy compilation of laws and references relating to this subject will be of great use to future legislatures.

CHARLES McCARTHY,

Chief Legislative Reference Department
Wisconsin Free Library Commission.

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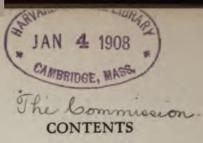
THE INITIATIVE AND REFERENDUM

STATE LEGISLATION

MARGARET A. SCHAFFNER

COMPARATIVE LEGISLATION BULLETIN-No 11-SEPTEMBER 1907
Prepared with the co-operation of the Political Science Department of the University of Wisconsin

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1	Page
REFERENCES	3
HISTORY	5
Local legislation	6
Adoption of state constitutions,	6
State legislation	6
Special constitutional provisions	7
Recent constitutional amendments	8
The advisory system	8
Validity of the initiative and referendum	9
LAWS AND JUDICIAL DECISIONS	10
Foreign countries	10
United States	13
SUMMARY	24
Scope of Direct State Legislation	24
Constitutional law	24
Statutory law	24
Public opinion	26
Party policy	20
Limitations on the Resubmission of Measures	26
Procedure for Initiative Petitions	27
Publicity	27
Completion of petition	27
Transmission of measure to legislature	28
Provision for competing bills	29
Reference of initiative measures and of competing bills	29
Procedure for Reference of Measures	29
Reference by petition	29
Reference by legislative action	30
Duty of officials	30
Elections for submission of measures	31
Veto power	31
When operative	31
Penaltfes	32

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An extensive collection of arguments and digest of literature on the subject.

UNITED STATES, HOUSE OF REPRESENTATIVES. Referendum and initiative, by Arthur S. Hardy. 57th Cong. 2nd sess. House of Representatives, doc. no. 1, p. 482-94. (In serial number 4440.)

A detailed report on direct legislation in Switzerland, made to the department of state by the American minister to Switzerland in June, 1902.

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HISTORY

The "Initiative" and the "Referendum" are new terms for old institutions.

The initiative¹ may be defined as the power the people reserve to themselves to propose laws and to enact or reject the same independent of the legislature.

The referendum¹ may similarly be described as the power the people reserve to themselves to approve or reject any act passed by the legislative assembly.

The forms of the initiative and the referendum may be described as optional or obligatory in their operation upon the electorate, and as advisory or mandatory in their operation upon the legislature.

The referendum is obligatory when a law must be submitted to the people, and optional when a law is submitted only upon petition by a certain number of voters.

Under the mandatory initiative and referendum, the direct vote of the people is conclusive in the enactment of legislation. Under the advisory system, the voterscan instruct their representatives by direct ballot. To make the system effective it is necessary to pledge representatives to obey the will of their constituents when expressed by referendum vote.

Public opinion laws merely secure the expression of public opinion on questions of public policy.

¹ Compare the definitions in the constitutions of Mont. Const. (Amend. 1906) art. 5, sec. 1; Okla. Const. 1907. art. 5, sec. 1; Ore. Const. (Amend. 1902) art. 4, sec. 1; S. D. Const. (Amend. 1898) art. 3, sec. 1; and in the proposed amendments for Me. Resolves, 1907. c. 121; Mo. Laws, 1907. p. 452; and N. D. Laws, 1907. p. 451.

Local legislation

The Swiss Landesgemeinde illustrates an early use of direct legislation in local affairs. The old New England town meeting, where measures were proposed and adopted or rejected at the option of the electors, affords another typical example.

Adoption of state constitutions

The state wide referendum for the adoption of state constitutions is a familiar institution in the United States.

The present constitution of Massachusetts, adopted in 1780, was the first in this country to be submitted to a direct referendum vote.

At the present time Delaware is the only state in the Union in which a referendum is not required for the adoption of constitutional amendments.

State legislation

The right to instruct representatives was commonly exercised before the adoption of written constitutions in this country.

The constitution of Massachusetts, adopted in 1780, expressly asserts the right of the people "to give instruction to their representatives." In 1783 the instructions from Boston ran: "It is our unalienable right to communicate to you our sentiments, and when we shall judge necessary or convenient, to give you our instructions on any special matter, and we expect you will hold yourselves at all times bound to attend to and to observe them."

After the adoption of written constitutions, judicial decisions generally concurred in the doctrine that the legislative assembly had no authority to redelegate the legislative power which was constitutionally vested in that body. Accordingly the legislature had no authority to refer the adoption or rejection of a general law to the people of the state.

For judicial decisions on this point, compare the following cases: Thorne v. Cramer, 1851, 15 Barb. (N. Y.), 112; Barto v. Himrod, 1853, 8 N. Y., 483; People v. Collins, 1854, 33 Mich., 343; State v. Copeland, 1854, 3 R. I., 33; Santo v. State, 1855, 2 Ia., 165; State v. Hayes, 1881, 61 N. H., 264.

For a contrary view, see State v. Parker, 1854, 26 Vt.,

Special constitutional provisions

The adoption of constitutional provisions which expressly require popular ratification or rejection of legislative acts on specified questions, is the next step in the history of direct legislation in the United States.

Provisions for the obligatory state wide referendum on special questions are found quite generally in our state constitutions. They cover a variety of questions including suffrage, state boundaries and annexations of territory, the location of the seat of government and of state institutions, apportionment, the incurring of state indebtedness, the loaning of the state credit, banks and banking, state aid to railways, taxation, appropriations, sale of school lands, and provisions for education.

For typical illustrations of the obligatory referendum compare the following constitutional provisions:

Suffrage. Col. Const. 1876, art. 7, sec. 2; N. D. Const. 1889, art. 5, sec. 122; S. D. Const. 1889, art. 7, sec. 2; Wis. Const. 1848, art. 3, sec. 1.

State boundaries and annexations of territory. W. Va.

Const. 1872, art. 6, sec. 11.

Location of seat of government. Col. Const. 1876, art. 8, sec. 2; Kan. Const. 1859, art. 15, sec. 8; Mont. Const. 1889, art. 10, sec. 2; Ore. Const. 1857, art. 14, sec. 1; Pa. Const. 1873, art. 3, sec. 28; S. D. Const. 1889, art. 20; Wash. Const. 1889, art. 14, sec. 1.

Location of state institutions. Tex. Const. 1876, art. 7.

secs, 10 and 14; Wyo. Const. 1889, art. 7, sec. 23,

Apportionment. W. Va. Const. 1872, art. 6, sec. 50.

Public credit. Cal. Const. 1879, art. 16; Col. Const.

1876, art. 11, sec. 5; Id. Const. 1889, art. 8, sec. 1; Ill. Const. 1870, art. 4, sec. 18; Ia. Const. 1857, art. 7, sec. 5;

Kan. Const. 1859, art. 11, sec. 6; Ky. Const. 1891, sec. 50; Mo. Const. 1875, art. 4, sec. 44; Mont. Const. 1889, art. 13, sec. 2; N. J. Const. 1844, art. 4, sec. 6; N. Y. Const. (Amend. 1905) art. 7, sec. 4; R. I. Const. 1844, art. 4, sec. 13; S. C. Const. 1895, art. 10, sec. 11; Wash. Const. 1889, art. 8, sec. 3; Wyo. Const. 1889, art. 16, sec. 2.

Banks and banking. Ill. Const. 1870, art. 11, sec. 5; Ia. Const. 1857, art. 8, sec. 5; Kan. Const. 1859, art. 13, sec. 8; Mo. Const. 1875, art. 12, sec. 26; and Wis. Const. 1848, art. 11, sec. 5. Wisconsin provides for a double referendum, first, to determine whether a law shall be submitted, and then, by a second referendum, whether the law submitted shall be adopted.

State aid to railways, Minn. Const. (Amend. 1860) art.

9, sec. 2.

Taxation. Col. Const. 1876, art. 10, sec. 11; Id. Const. 1889, art. 7, sec. 9; Ill. Const. 1870, art. 4, sec. 33; Mont. Const. 1889, art. 12, sec. 9; Utah, Const. 1895, art. 13, sec. 7.

Appropriations for public buildings. Col. Const. 1876, art. 11, secs. 3-5; Ill. Const. 1870, art. 4, sec. 33.

Sale of school lands. Kan. Const. 1859, art. 6, sec. 5. Provisions for education. Tex. Const. 1876, art. 7, secs. 10 and 14.

Recent constitutional amendments

Within recent years a number of states have adopted constitutional provisions establishing the initiative and referendum for general state legislation. These amendments provide for the optional initiative and referendum, whereas the older constitutional provisions for the referendum on special state questions are obligatory.

For recent constitutional provisions for direct state - legislation, see S. D. Const. (Amend. 1898) art. 3, sec. 1; Utah, Const. (Amend. 1900) art. 6, secs. 1 and 22; Ore. Const. (Amend. 1902). art. 4, sec. 1; Nev. Const. (Amend. 1904) art. 19, secs. 1 and 2, (provides referendum only); Mont. Const. (Amend. 1906) art. 5, sec. 1; Okla. Const., 1907, art. 5, secs. 1-4, 6-8, and art. 24, sec. 3.

For proposed constitutional amendments, see Me., Resolves, 1907, c. 121; Mo., Laws, 1907, p. 452-3; N. D., Laws,

1907, p. 451-3.

Advisory systems

The difficulty of securing constitutional amendments

for the initiative and referendum has led to the development of other methods for securing at least partial systems of direct state legislation.

Public opinion laws. A public opinion system was enacted in Illinois in 1901. The electors of that state have voted upon a number of legislative questions; but as the candidates for the legislature were not pledged to obey the wishes of their constituents, these expressions of opinion have not been very effective in securing the legislation desired.

See Ill. Laws, 1901, p. 198.

The advisory system within parties. The advisory system within the parties at primary elections was adopted in Texas in 1905.

See Tex. Laws, 1905, c. 11, sec. 140.

Validity of the initiative and the referendum

The validity of legislation for the initiative and referendum has been sustained in a number of recent court decisions.

In 1903 the supreme court of Oregon held that the initiative and referendum amendment to the constitution did not abolish nor destroy the republican form of government, nor substitute another in its place. The court declared: "The representative character of the government still remains. The people have simply reserved to themselves a larger share of legislative power." Kadderly v. Portland, 1903, 44 Ore., 118.

An interesting discussion as to what constitutes representative government is given by Madison in The Federalist, 302.

For additional judicial decisions on direct legislation, see State ex rel. Lavin et al. v. Bacon et al., 1901, 14 S. D., 284; and In re Pfahler, 1906, 88 P., 270.

LAWS AND JUDICIAL DECISIONS²

Foreign countries

Switzerland.³ Fed. Const. 1874, art. 89. Federal laws, enactments, and resolutions are to be passed only by the agreement of the two councils. Federal laws must be submitted for acceptance or rejection by the people if the demand is made by 30,000 voters or by 8 Cantons. The same principle applies to federal resolutions which have a general application and which are not of an urgent nature.

art. 120. When either council of the Federal Assembly passes a resolution for the complete amendment of the federal constitution and the other council does not agree, or when 50,000 voters demand the complete amendment, the question whether the federal constitution ought to be amended is, in either case, to be submitted to a referendum vote, and if the majority of the citizens who vote pronounce in the affirmative, there must be a new election of both councils for the purpose of preparing the complete amendment.

The present study concerns itself only with the initiative and the referendum for general state legislation. Constitutional provisions for the obligatory referendum on special state questions, and state legislation relating to the initiative and referendum in local affairs, are not considered.

² See United States. 57th Cong. 2nd sess. House of Rep. doc. no. 1 (in serial no. 4440) p. 982-94, for an excellent account of the Swiss referendum and initiative, by Arthur S. Hardy, formerly U. S. minister to Switzerland.

Fed. Law, June 17, 1874. This law provides the procedure for referendums.

Fed, Const. (Amend, 1891) art, 121. Partial amendment may take place through the forms of popular initiative or of those required for passing federal laws. The initiative may be used when 50,000 voters present a petition for the enactment, the abolition, or the alteration of certain articles of the federal constitution. When several subjects are proposed for amendment or for enactment in the federal constitution by means of the initiative, each must form the subject of a special petition. Petitions may be presented in the form of general suggestions or of finished bills. When a petition is presented in the form of a general suggestion, and the Federal Assembly agrees thereto, it is the duty of that body to elaborate a partial amendment in the sense of the initiators, and to refer it to the people and the Cantons for acceptance or rejection. If the Federal Assembly does not agree to the petition, then the question of whether there shall be a partial amendment at all must be submitted to the vote of the people, and if the majority of voters express themselves in the affimative, the amendment must be taken in hand by the Federal Assembly in the sense of the people.

When a petition is presented in the form of a finished bill, and the Federal Assembly agrees thereto, the bill must be referred to the people and the Cantons for acceptance or rejection. In case the Federal Assembly does not agree, that body can elaborate a bill of its own, or move to reject the petition and submit its own bill or motion to the vote of the people and the Cantons along with the petition,

art. 123. The amended federal constitution, or the amended part thereof, is to be in force when it has been adopted by a majority of the citizens who take part in the vote thereon, and by a majority of the states. In making up a majority of the states the vote of a half Canton is counted as a half vote.

Fed. Law, June 27, 1892. This law provides the mode of procedure for the initiative.

The Cantons. All the Cantons possess the initiative either in constitutional or legislative matters, or both. All except Freiburg have some form of the referendum either obligatory or optional, or both.

Great Britain. The question of introducing the referendum to settle disputes between the two houses was recently discussed in the British Parliament.

See the Parliamentary Debates for June 24, 1907, p. 911, 922-3.

Commonwealth of Australia. Const. 1900. This constitution was ratified by referendum vote taken in the separate colonies in Australia from 1898 to 1900. Under chapter 8, section 128, of the constitution, proposed amendments must be submitted to a referendum vote. A double majority is required for ratification, namely, a majority of all the electors voting and also a majority vote in more than half of the states.

Norway. An interesting use of the referendum was made by the people of Norway in their separation from Sweden. A Resolve of the Storthing on July 28, 1905, provided for a referendum vote of the electors over the

whole country to decide the question of the dissolution of the union. The referendum took place on August 13, 1905, and resulted in a practically unanimous vote for the dissolution.

United States

Illinois. Laws, 1901, p. 198. Under this law the submission of any question for an expression of public opinion may be secured on a written petition signed by 10% of the registered voters of the state. The petition must be filed with the proper election officers not less than sixty days before the election at which the question is to be considered. Not more than three propositions may be submitted at the same election and they are to be submitted in the order of filing.

Maine. (Proposed Const. Amend.) Resolves, 1907, c. 121. This amendment applies to statutory but not to constitutional law. Certain specific exemptions are also made for statutory law.

Emergency bills are not subject to the referendum. Such bills may include measures immediately necessary for the preservation of the public peace, health, or safety, but may not include (1) an infringement of the right of home rule for municipalities; (2) a franchise or license to a corporation or an individual, extending longer than one year; or (3) provision for the sale, or purchase, or renting for more than five years of real estate. The emergency and also the facts creating the same must be set forth in the preamble of the act. A two-thirds vote of all the members elected

to each house is necessary to pass an emergency measure.

Initiative bills may propose any measure, including bills to amend or repeal emergency legislation, but not to amend the state constitution. The petition must set forth the full text of the measure proposed and must be signed by not less than 12,000 electors. posed measures must be submitted to the legislature. and unless they are enacted without change, they must be submitted to the electors together with any amended form, substitute, or recommendation of the legislature, in such a manner that the people can choose between the competing measures, or reject both. When there are competing bills and neither receives a majority of the votes given for and against both, the one receiving the most votes is to be resubmitted by itself at the next general election, to be held not less than sixty days after the first vote thereon; but no measure is to be resubmitted unless it has received more than one-third of the votes given for and against both. An initiative measure enacted by the legislature without change is not to be referred unless a popular vote is demanded by a referendum petition. If the governor vetoes any measure initiated by the people and passed by the legislature without change and his veto is sustained by the legislature, the measure is to be referred to the people at the next general election.

The legislature may enact measures expressly conditioned upon the people's ratification by referendum vote.

Petitions for a reference of any act passed by the

legislature must be signed by not less than 10,000 electors, and must be filed within ninety days after the recess of the legislature. The governor is required to give notice of the suspension of acts through referendum petitions and make public proclamation of the time when the referred measure is to be voted upon. Referred measures do not take effect until thirty days after the governor has announced their ratification by a majority of the electors voting thereon.

Missouri. (Proposed Const. Amend. 4) Laws, 1907, p. 452–3. The initiative and referendum apply to statutory law and to constitutional amendments. Initiative petitions require not more than 8% of the legal voters in each of at least two-thirds of the congressional districts in the state. Every petition must include the full text of the measure proposed, and must be filed not less than four months before the election at which it is to be voted upon.

The referendum may be ordered upon a petition signed by 5% of the legal voters in each of at least two-thirds of the congressional districts, or by the legislative assembly. Emergency measures are exempt from the referendum. Laws making appropriations for the state government, for the state institutions, and for the public schools are also exempt. Referendum petitions must be filed not more than ninety days after the final adjournment of the legislative session. A referred measure becomes a law when approved by a majority of the votes cast thereon.

⁴This amendment will be submitted to the voters in Nov., 1908, for adoption or rejection.

Montana. Const. (Amend. 1906) art. 5, sec. 1. Direct legislation is established for statutory, but not for constitutional law. Certain specific exemptions are also made for statutory law. The referendum may not be invoked for emergency measures.

Initiative petitions require 8% of the legal voters from two-fifths of the whole number of counties of the state. They must include the full text of the measure proposed, and must be filed not less than four months before the election at which they are to be voted upon.

Referendum petitions require 5% of the voters from each of two-fifths of the counties and they must be filed not later than six months after the final adjournment of the legislative session.

Any measure referred to the people is to remain in full force and effect unless the referendum petition is signed by 15% of the legal voters of a majority of the whole number of the counties of the state, in which case, the law remains inoperative until it is passed upon at an election and the result has been determined as provided by law.

Laws, 1907, c. 62. This law establishes the procedure for carrying the direct legislation provisions of the constitution into effect. It definitely sets forth the requirements as to the form of petitions; the verification of signatures; the duties of officials in submitting petitions; the publication and distribution of the title and text of measures and of arguments; the manner of conducting the elections and of canvassing the vote; and

the proclamation of the governor declaring the enactment of the approved measures.

Provision is made for the official distribution of the text of measures to all the electors in the state. In addition, arguments for or against any proposed measures may be supplied at the expense of the parties interested; and such arguments when printed in pamphlet form of specified size and style, will be mailed by the state with the official copy of the measure to each voter.

Parties filing initiative petitions may supply arguments for and opposing parties may supply arguments against the measures proposed. In the case of referendums, any person may supply arguments for or against the referred measures; but the secretary of state is not obliged to receive any pamphlets for distribution unless a sufficient number is furnished to supply one to every legal voter in the state.

Nevada. Const. (Amend., 1904) art. 19, secs. 1 and 2. A referendum may be ordered on petition of 10% of the voters. A referred measure becomes operative when approved by a majority vote.

North Dakota. (Proposed Const. Amend.⁶) Laws, 1907, p. 451-3. The initiative and referendum apply to statutory law and to constitutional amendments, but the same constitutional amendment may not be proposed oftener than once in ten years.

Initiative petitions require not more than 8% of the legal voters, they must include the full text of the

⁵ This amendment does not provide for the initiative, and the procedure provided for the referendum is indefinite.

⁶ This amendment must also be passed by the next legislature before being submitted to the people for adoption or rejection.

measure proposed, and must be filed not less than thirty days before any regular session of the legislature. The proposed measure must be transmitted to the legislature as soon as it convenes. Initiative measures take precedence over all other measures in the legislative assembly, except appropriation bills, and must be enacted or rejected without change or amendment within forty days. Any initiative measure enacted by the legislature is subject to referendum petition, or it may be referred by the legislature. If it is rejected, or no action is taken upon it by the legislature within the forty day limit, it must be submitted to the people for approval or rejection at the next regular election. The legislature may reject any measure proposed by initiative petition and propose a competing bill to accomplish the same purpose. This gives opportunity for publicity, for committee hearings, for the taking of testimony, for debate, and for deliberative consideration. When an initiative measure and a competing bill are both proposed, they must both be submitted to the people. In case conflicting measures submitted at the same election are both approved by a majority of the votes severally cast for and against the same, the one receiving the highest number of affirmative votes becomes valid and the other is thereby rejected.

The referendum does not apply to emergency measures. However, provision is made against an undue use of the emergency clause by the requirement that the facts creating the emergency be stated in one section of the bill, and if upon an aye and nay vote in

each house, two-thirds of all the members elected to each house vote on a separate roll call in favor of the law going into instant operation, it becomes operative upon approval of the governor.

Referendum petitions require not more than 5% of the legal voters and must be filed not more than ninety days after the final adjournment of the legislature. Any constitutional amendment or other measure referred to the people is to take effect when approved by a majority of the votes cast thereon, and is to be in force from the date of the official declaration of the vote.

This amendment is self executing, but legislation may be enacted to facilitate its operation.

Oklahoma. Const. 1907, art. 5, secs. 1-4, 6-8, and art. 24, sec. 3. The initiative and referendum apply to constitutional and to statutory law. Emergency measures are exempt from the referendum provisions.

Legislative measures may be proposed by 8%, and amendments to the constitution by 15% of the legal voters. Initiative petitions must contain the full text of the measure proposed. They must be filed with the secretary of state and be addressed to the governor who must submit them to the people.

A referendum may be ordered by 5% of the legal voters. Petitions for referred measures must be filed not more than ninety days after the final adjournment of the legislature.

Initiative measures require a majority of the votes cast at the election, while only a majority of the votes cast on a referred measure are necessary to give it effect. The referendum may be demanded by the people against one or more items, sections, or parts of any act of the legislature.

The explicit statement is also inserted that "the reservation of the powers of the initiative and referendum shall not deprive the legislature of the right to repeal any law, or propose or pass any measure which may be consistent with the constitution of the state and the constitution of the United States."

In the light of the experience of older states that have adopted direct legislation in state affairs, this statement seems superfluous. The provisions of the state constitutions which reserve direct legislative power for the people do not contemplate the restriction of initiative power in the legislature; the power constitutionally delegated to representatives to initiate measures or to repeal laws still remains. The people merely reserve the right to propose measures and to enact or reject either initiative or legislative measures independent of the legislative assembly. For a discussion of this point, see Kadderly v. Portland, 1903, 44 Or. 118.

Oregon. Const. (Amend., 1902) art. 4, sec. 1. The initiative and referendum apply to constitutional and to statutory law, but the referendum may not be invoked for emergency measures.

Every initiative petition must contain the full text of the measure proposed, must be signed by at least 8% of the legal voters, and must be filed not less than four months before the election at which it is to be voted upon.

Referendum petitions must be signed by at least 5% of the voters, and must be filed not more than ninety days after the final adjournment of the legislative assembly.

Any measure referred to the people becomes a law

when it is approved by a majority of the votes cast thereon.

The initiative and referendum amendment does not abolish or destroy the republican form of government or substitute another in its place. The representative char-

acter of the government still remains

Under this amendment, it is true, the people may exercise a legislative power and may in effect veto bills passed and approved by the legislature and the governor, but the legislative and executive departments are not destroyed... Laws proposed and enacted by the people under the initiative laws of the amendment are subject to the same constitutional limitations as other statutes and may be amended or repealed by the legislature at will. Kadderly v. Portland, 1903, 44 Or. 118.

Laws, 1907, c. 226. This act facilitates the operation of the initiative and referendum powers reserved by the people, regulates elections thereunder, and provides penalties for violations. The law definitely prescribes the form of initiative and referendum petitions; the manner of verifying signatures; the duties of officials in submitting measures; the method of canvassing and making returns; and the declaration of the enactment of approved measures.

The following definite provision is made for the publication and distribution of the text of proposed measures and for arguments advocating or opposing the questions submitted:—Before any election at which any proposed law or amendment to the constitution is to be submitted to the people, the secretary of state is required to have printed in pamphlet form the text of each measure to be submitted, together with the title as it will appear on the official ballot. Parties filing initiative petitions have the right to file any arguments advocating such measures. In the case of referen-

dums, any person has the right to file arguments for or against the referred measures. The parties offering arguments for distribution must pay all the expense for paper and printing to supply one copy with every copy of the measure to be printed by the state. The cost of printing, binding, and distributing the measures proposed, and of binding and distributing the arguments, are to be paid by the state as a part of the state printing. Within a specified time before any election at which measures are to be voted upon, the secretary of state is required to transmit copies of each measure together with the arguments submitted, to the voters within the state.

See Stevens v. Benson, 1907, 91 P. 577.

South Dakota. Const. (Amend., 1898) art. 3, sec. 1. Under this amendment the people expressly reserve the right to propose measures which the legislature is required to enact and to submit to a vote of the electors. They also reserve the right to require a referendum on any law which the legislature may have enacted, except laws necessary for the immediate preservation of the public peace, health, or safety, and laws for the support of the state government and its existing public institutions.

Not more than 5% of the qualified voters are required to invoke either the initiative or the referendum.

Pol. Code, 1903, secs. 21-7. Initiative petitions must contain the substance of the law desired. Referendum petitions must describe the law to be submitted by setting forth the title together with the date of pasage and approval; such petitions must be filed within.

ninety days after the adjournment of the legislature. Initiative or referendum measures approved by a majority of the votes cast thereon become law and are to be in force immediately after the result has been officially determined. (Laws, 1899, c. 93.)

The legislature having declared that the provisions of an act are necessary for the immediate preservation and support of the existing public institutions of the State, that declaration is conclusive upon this court. Such an act is clearly not within the referendum clause of sec. 1 as amended, of art. 3 of the constitution. State ex rel. Lavin et al. v. Bacon et al. 1901, 14 South Dakota, 394.

Texas. Laws, 1905, c. 11, sec. 140. Under the primary election law, 10% of the voters in any political party may propose policies and candidates and secure a direct party vote thereon. Petitions are to be filed with the chairman of the county or precinct executive committee at least five days before the tickets are to be printed and the chairman may require a sworn statement that the names of the applicants are genuine.

The number of signatures required for a petition is to be determined by the votes cast for the party nominee for governor at the preceding election. It is the duty of the chairman to submit any proposition for which a petition is filed, and the delegates selected at that time are to be considered instructed for whichever proposition a majority of the votes is cast. Provision is also made that all additional expense of printing any proposition on the official primary ballot is to be paid for by the parties requesting the same.

Utah. Const. (Amend, 1900) art. 6, secs 1 and 22. This amendment provides for direct legislation, but the amendment is not self executing and three successive legislatures have refused to put it in force.

SUMMARY

The leading provisions relating to direct state legislation may be summarized under the scope of direct legislation, limitations on the re-submission of measures, procedure for initiative petitions, procedure for reference of measures, enactment of referred measures, and penalties.

SCOPE OF DIRECT LEGISLATION

In the United States direct legislation has been applied to constitutional and to statutory law; it has also been employed to obtain expressions of public opinion on state affairs, and to secure instructions as to party policy within the political parties.

Constitutional law

The constitutional amendments for direct legislation in state affairs apply generally to constitutional law.

Exceptions. Some of the states exempt constitutional amendments from the operation of the initiative.

See Mont. Const. (Amend. 1906) art. 5, sec. 1; Me. (Proposed Const. Amend.) Resolves, 1907, c. 121.

Statutory law

As regards statutory law, most of the amendments provide for specific exceptions to the use of direct legislation and also provide for emergency measures. Exceptions. The specific exceptions generally relate to appropriations for the current expenses of the state government, for the maintenance of the state institutions, and for the support of the public schools.

Compare the provisions of Me., Mo., Mont. and S. D.

Emergency measures. Laws necessary for the immediate preservation of the public peace, health, or safety, are generally exempt from the operation of the referendum.

See Me. (Proposed Const. Amend.) Resolves, 1907, c. 121; Mo. (Proposed Const. Amend.) Laws, 1907, p. 452-3; Mont. Const. (Amend. 1906) art, 5, sec. 1; N. D. (Proposed Const. Amend.) Laws, 1907, p. 451-3; Okla. Const. 1907, art. 5, sec. 2; Ore. Const. (Amend. 1902) art. 4, sec. 1; S. D. Const. (Amend. 1898) art. 3, sec. 1.

A safeguard against the undue use of emergency measures is provided in a number of cases by requiring the declaration of the emergency and a separate roll call and vote on the question of the emergency. A two-thirds majority, on an aye and nay vote, of all the members elected to each house is also sometimes required for the passage of emergency bills.

Compare the provisions of Me. and N. D.

A further safeguard against the abuse of the emergency clause by the legislature is secured by an enumeration of laws which may not be enacted as emergency measures.

Thus, the proposed amendment for Maine provides that an emergency bill shall not include (1) the infringement of the right of home rule for municipalities; (2) a franchise or a license to a corporation or an individual to extend longer than one year; or (3) provision for the sale or purchase or renting for more than five years of real estate.

The courts have uniformly held that the question as to whether a law is necessary for the immediate preservation of the public peace, health, or safety, is for the legislature and is not subject to judicial review.

See State v. Bacon, 1901, 14 S. D., 394; and Kadderly v. Portland, 1903, 44 Ore., 118.

Public opinion

Public opinion system. Under public opinion laws pressure may be brought to bear upon legislators in the enactment of law.

See Ill. Laws, 1901, p. 198.

Advisory system. The advisory system goes farther in the same direction and instructs representatives as to legislative action.

Party policy

Advisory system within the parties. The use of the advisory system within the parties at primary elections enables the voters in any political party to propose policies and candidates and secure a direct party vote thereon.

See Tex. Laws, 1905, c. 11, sec. 140.

LIMITATIONS ON THE RESUBMISSION OF MEASURES

The possible abuse of direct legislation through a frequent resubmission of defeated propositions, is provided against in a number of states.

N. D. (Proposed Const. Amend. 1907) provides that the same constitutional amendment shall not be proposed oftener than once in ten years.

In Okla. Const, 1907, art. 5, sec. 6, any measure rejected by the people cannot be again proposed by the initiative within three years by less than 25% of the legal voters.

PROCEDURE FOR INITIATIVE PETITIONS

The procedure for initiative measures varies in the several states. Differences exist in the requirements for publicity, the completion of the petition, the transmission of measures to the legislature, the provision for competing bills, and the reference of initiative and of conflicting measures.

Publicity

Publicity is secured through the publication of the text of initiative measures and the distribution of arguments for and against proposed bills.

Publication of text of measure. Most of the states require the publication of the full text of initiative and referendum measures.

Compare the provisions for Me., Mo., Mont., N. D., Okla., Ore., and S. D. $\,$

Distribution of arguments. Certain states also make provision for the distribution of arguments.

For elaborate provisions for the distribution of arguments for and against proposed measures, see Mont. Laws, 1907, c. 62, and Ore. Laws, 1907, c. 226.

Completion of petition

The percentage of voters required to sign petitions, the basis of the percentage, the verification of signatures, and the method of filing petitions, vary considerably with the different states.

Percentage of voters. The percentage ranges from 5% to 15%.

The percentages for the different states are as follows: 8 per cent for Mo., Mont., N. D., Okla., and Ore.; and 5 per cent for S. D. In Mo. the 8 per cent is required only from each of at least two-thirds of the congressional districts, while in Mont. at least two-fifths of the whole number of counties must each furnish 8 per cent toward

making up the required 8 per cent for the entire state. Okla. requires 15 per cent to propose constitutional amendments. Instead of requiring a certain percentage, Me. requires a fixed number of 12,000 signatures for initiative measures.

Basis of percentage. The percentage required is uniformly based upon the vote cast at the last preceding general election.

In S. D. and Mont. the per cent is based on the vote for governor; in Ore., Mo., and N. D., on the vote for justices of the supreme court; and in Okla. on the vote for the state office receiving the highest number of votes.

Verification of signatures. The methods for verifying signatures are definitely prescribed in the laws enacted to facilitate the operation of the several amendments.

See S. D. Laws, 1899, c. 93; Ore. Laws, 1907, c. 226; and Mont. Laws, 1907, c. 62.

Filing. Provision is generally made that initiative petitions be filed with the secretary of state. The time for filing varies according to whether the petition is to be presented to the legislature, or is to be voted upon by the people without legislative consideration.

Time. The time for filing is not less than four months before the election in Ore., Mont., and Mo.; not less than thirty days before any regular session in N. D.; and at least thirty days before the close of the session in Me.

Transmission of measures to legislature

The requirement that all proposed measures be transmitted to the legislature gives opportunity for public hearings, for testimony, for debate, and for deliberative consideration.

Compare the provisions of Me. (Proposed Const. Amend.) Laws, 1907, c. 121, and of N. D. (Proposed Const. Amend.) Laws, 1907, p. 451-3. Precedence of initiative measures. Provision is sometimes made that initiative measures take precedence over all other measures in the legislature except appropriation bills.

See the proposed amendment for N. D.

Limitations on legislative action. The provision that the legislature must enact the measure submitted is a restriction found in only one of the states.

S. D. Const. (Amend. 1898) art. 3, sec. 1.

N. D. requires that the legislature enact or reject the proposed measure within forty days.

Provision for competing bills

An important feature in several states is the provision that the legislature may submit a competing bill if it disapproves of the initiative measure. This affords opportunity for deliberative consideration of conflicting measures, and to some extent protects the people against the bills of extremists.

Reference of initiative measures and of competing bills

Competing bills are to be submitted with initiative measures so that the electors may choose between them or reject both.

See Me. (Proposed Const. Amend.) Resolves, 1907. c. 121, and N. D. (Proposed Const. Amend.) Laws, 1907, p. 451-3.

PROCEDURE FOR REFERENCE OF MEASURES

Measures may be referred either by petition or by legislative action.

Reference by petition

The requirements for reference by petition vary both

as to the percentage of voters required and the manner of filing petitions.

Percentage of voters. The required percentage ranges from 5% to 10%.

The percentages are 5 per cent for Mo., Mont., N. D., Okla., Ore., and S. D., while Nev. requires 10 per cent. The requirements for two-thirds of the congressional districts in Mo., and for two-fifths of the counties in Mont. holds for referendum as well as for initiative petitions. Me. requires a fixed number of 10,000 signatures.

Mont, has a provision that any measure referred to the people is to remain in full force unless the petition is signed by 15 per cent of the legal voters of a majority of the whole number of counties in the state, in which case

the law remains inoperative until it is passed upon at an election and the result is officially determined.

Basis of percentage. The basis of the required percentage is the same as for initiative petitions.

Filing. Petitions are to be filed with the secretary of state within a specified time.

Time. The time for filing is not less than ninety days after the legislative session in S. D., Ore., Okla., Mo., Me., and N. D.; and not later than six months after the session in Mont.

Reference by legislative action

The legislature may enact measures expressly conditioned upon the people's ratification by referendum vote.

Compare the constitutional provisions of Ore., Mont., and Okla., and the proposed amendments for Me., Mo., and N. D.

Vote required. Montana requires a majority vote of the members elect to refer an act of the legislative assembly.

Duty of officials

In submitting initiative and referendum petitions to a vote of the people, the secretary of state and all other officers are to be guided by the general laws until legislation is especially provided.

Compare the provisions for Me., Mo., Mont., N. D., and Ore.

ENACTMENT OF REFERRED MEASURES

Elections for submission of measures

Measures may be referred for enactment or rejection at general or at special elections,

General Elections. S. D. provides for submission of measures only at general elections.

Special elections. Provision is made for special elections to be ordered, by the legislature in Mo., Mont. and Ore.; by law in N. D.; and by the legislature or the governor in Okla. and Me. Under the Me. provision the governor must order a special election, if so requested in the petition.

Veto power

The veto power of the governor does not extend to measures referred to the people.

See S. D., Ore., Mont., Okla., Me., Mo., and N. D.

The proposed amendment for Me. requires that if any measure initiated by the people and passed by the legislature without change, is vetoed by the governor, and if his veto is sustained by the legislature, the measure must be referred to the people at the next general election.

When operative

The provisions for the several states generally require that any measure referred to a vote of the people is to become law and be in force from the date of the official declaration that it has been approved by a majority of the votes cast thereon.

In Okla, initiative measures must be approved by a

majority of the votes cast at the election.

In Me. provision is made that initiative measures enacted by the legislature without change, are not to be referred unless a referendum vote is demanded. When initiative and competing bills are submitted at the same election, and neither receives a majority of the votes given for and against both, the one receiving the most

votes is to be resubmitted by itself; but no measure is to be resubmitted unless it received more than one-third of the votes.

Under the N. D. provision, if conflicting measures submitted at the same election are both approved by a majority severally cast for and against each, the one receiving the highest number of affirmative votes is enacted.

PENALTIES

The laws enacted to facilitate the operation of the direct legislation amendments provide penalties for the unlawful signing of petitions.

In S. D., Ore., and Mont., the unlawful signing of initiative or referendum petitions is punishable by fine, or by imprisonment, or both, in the discretion of the court. In S. D. (Laws, 1899, c. 93) the fine is not to exceed \$500.00 nor the imprisonment five years. In Ore. (Laws, 1907, c. 226) and in Mont. (Laws, 1907, c. 62) the fine is fixed at the same limit and the imprisonment is not to exceed two years.





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THE RECALL

MARGARET A. SCHAFFNER

MADISON, WISCONSIN-DECEMBER, 1907





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MARGARET A. SCHAFFNER

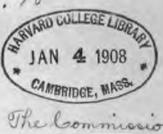
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Prepared with the co-operation of the Political Science Department of the University of Wisconsin

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CON'I S

		Page
REFERENCES	************	3
METHODS OF ENACTA		5
Municipal Legislation		5
State Legislation		6
LAWS AND JUDICIAL DECISIO	NS	7
Foreign Countries		7
United States		8
SALIENT FEATURES		17
Scope of Recall		17
Prohibition of Repeated Reca	lls	18
Procedure for Petition		18
Removal Election		20
Tenure of Office	•••••	21

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METHODS OF ENACTMENT

The right of recall is the power to remove an official at an election held upon petition of a specified percentage of the qualified electors.¹

If the incumbent is sustained at the removal election, he continues to hold office.

The enactment of provisions for the recall of officials has been secured through state and through municipal legislation.

Municipal legislation²

Freeholders' charters. The recall has been adopted in a number of cities in California and Washington under the general constitutional and legislative provisions for the framing of freeholders' charters by means of an elected board of freeholders.

For municipal charters which incorporate a recall provision, see San Bernardino, Cal. Laws, 1905, p. 960-1; Santa Monica, Cal. Laws, 1907, p. 1047-8; Alameda, Cal. Laws, 1907, p. 1101-3; Long Beach, Cal. 1907, p. 1230-33; Riverside, Cal. Laws, 1907, p. 1345-7; and Everett, Wash., Charter adopted Nov. 26, 1907.

¹ Compare the provisions for Los Angeles, Cal. Laws, 1903, p. 574-5; Seattle, Charter Amendment adopted March 6, 1906; Lewiston, Id. Laws, 1907, p. 358-60; Des Moines, Ia. Laws, 1907, p. 58-60; sec. 18; and Fort Worth, Tex. Special Laws, 1907, p. 130-1.

² In California, charters framed by boards of freeholders and charter amendments secured through direct initiative petitions must be ratified by the legislature after being adopted by the people, but the legislature has uniformly ratified such charter provisions. In Washington, freeholders' charters and charter amendments need not be referred to the legislature.

Freeholders' charter amendments. In a number of cities the recall has been secured as an amendment to freeholders' charters through direct initiative petitions.

The recall has been established as a charter amendment in Los Angeles, Cal. Laws, 1903, p. 574-5; San Diego, Cal. Laws, 1905, p. 922-3; Pasadena, Cal. Laws, 1905, p. 1022-3; Fresno, Cal. Laws, 1905, p. 1057-9; Seattle, Wash., Charter Amendment adopted March 6, 1906; and San Francisco, Cal., Charter Amendment adopted Nov. 5, 1907.

State legislation

General. A number of states have provided for the recall through general legislation.

For recall provisions established through general law, compare the legislation of Ia. Laws, 1907, c. 48, sec. 18; S. D. Laws, 1907, c. 86; and Wash. Laws, 1907, c. 241, sec. 15.

Special. Municipal charters and charter amendments incorporating the recall have also been granted through special legislation.

Compare the charter provisions of Lewiston, Id. Laws, 1907, p. 358-60; Fort Worth, Tex. Special Laws, 1907, p. 130-1; Denison, Tex. Special Laws, 1907, p. 361-6; and Dallas, Tex. Special Laws, 1907, p. 621-2.

LAWS AND JUDICIAL DECISIONS

Laws relating to the recall are of recent date in the United States. However, the principle underlying the institution was recognized in America before the adoption of the constitution, when the delegates to the Continental Congress from Pennsylvania were recalled because they refused to sign the Declaration of Independence and other delegates were sent in their stead.

In Switzerland the right to recall officials seems to have been exercised in some of the Cantons from their earliest development of representative government, and although the right is not frequently exercised at the present time, the recall is a recognized institution in local government in about one-third of the Swiss Cantons.

A significant recognition of the principle is found in the development of representative government in England, for after all, the recall is not unlike the British system by which Parliament is dissolved, when the members go back to the people and a new Parliament is elected.

Foreign countries

Switzerland. The recall exists in a number of Cantons in Switzerland. Typical provisions may be found in the laws of Aargau, Basel-Landschaft, Berne, and Schaffhausen.

Aargau. Cantonal Constitution, 1885, art. 29. When 5,000 qualified electors request the recall of the Great Council in lawful manner, the Executive Council must put the demand of the people to vote. If the majority of the qualified electors declare themselves for the recall, the Great Council must be entirely renewed. The newly elected Great Council is to complete the term of the one which was recalled.

Basel-Landschaft. Cantonal Constitution, 1892, art. 29. The recall of officials may take place only in the legally prescribed forms.

Berne. Law of February 20, 1851. Provides the procedure for the recall of officials.

Also see the provisions of the Cantonal Constitution, 1893, art. 16, and of the Law of October 29, 1899, sec. 3.

Schaffhausen. Law of October 1, 1904, art. 67–9 and art. 80–2. All demands for carrying out the popular right of recall must be presented to the Executive Council in the form of written petitions, signed by at least 1,000 qualified voters of the Canton.

United States

California. The recall has been adopted by a number of cities having the right to adopt freeholders' charters and charter amendments.

Const. 1879, art. 11, sec. 8 (amended 1906). Under this section any city having a population of 3,500 or more, may adopt a freeholders' charter subject to the approval of the legislature. An amendment to the charter must be submitted to the people on petition of 15% of the electors, and if adopted, must be submitted to the legislature for approval or rejection.

Const. 1879, art. 20, sec. 16 (amended 1906). "In the case of any officer or employee of any muncipality governed under a legally adopted charter, the provisions of such charter with reference to the tenure of office or the dismissal from office of any such officer or employee shall control."

Los Angeles. Charter Amendment,3 Cal. Laws, The holder of any elective office may 1903, p. 574-5. be removed at any time by the electors qualified to vote for a successor of the incumbent. The procedure to effect the removal is as follows: The petition demanding an election of a successor of the person sought to be removed must be signed by 25% of the qualified electors, must contain a general statement of the grounds for which the removal is sought, and must be filed with the city clerk. The required percentage of signers is to be based upon the entire vote cast at the last preceding general municipal election for all candidates for the office the incumbent of which is sought to be removed. The signatures to the petition need not all be appended to one paper, but each signer must add to his signature his place of residence. giving the street and number. One of the signers of each paper is required to make oath before an officer competent to administer oaths, that the statements therein made are true, and that the signatures are genuine. Within ten days from the date of filing the

³ The Los Angeles amendment is so like the Cantona' law of Schaffhausen, Switzerland, that it seems to have been modelled after the system developed in that Canton. The recall law enacted in Schaffhausen Nov. 16, 1876, was replaced by a new revision of Oct. 1, 1904.

petition the city clerk must examine the great register and ascertain whether or not the petition is signed by the requisite number of qualified electors. If necessary, the council must allow him extra help for that purpose. The city clerk must attach his certificate to the petition showing the result of the examination. If the petition is shown to be insufficient, it may be amended within ten days. Within ten days after amendment the clerk must make like examination of the amended petition, and if it is still insufficient, it is to be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect. If the petition is shown to be sufficient, the clerk must submit the same to the council without delay. If the petition is found to be sufficient, the city council must order and fix a date for holding the election, not less than thirty days nor more than forty days from the date of the clerk's certificate to the council that a sufficient petition is filed. The city council is required to provide for publication of notice, and all arrangements for holding the election; and the same is to be conducted and returned in all respects as other city elections. The successor of any officer so removed is to hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeeed himself. and, unless he requests otherwise in writing, the clerk is required to place his name on the official ballot without nomination. In any removal election the candidate receiving the highest number of votes is to be declared elected. Unless the incumbent receives the highest number of votes, he is deemed to be removed from the office upon qualification of his successor. In case the party who receives the highest number of votes fails to qualify within ten days after receiving notification of election, the office is to be deemed va-

The names of the petitioners must be on the great register and ascertained by the clerk to be there, otherwise they are not qualified signers of the petition. Affidavits of registration are not a part of the great register. Davenport v. City of Los Angeles, et al., 1905, 146 Cal. 508.

San Diego. Charter Amendment, Cal. Laws, 1905, p. 922-3. The procedure for removal is similar to that of Los Angeles.

The act of the city council in accepting the petition for the recall of a councilman is merely ministerial. When a petition bears the proper number of names of electors, as shown by the clerk's certificate, no discretion remains with the council, but it is its duty to call an election. Good v. Common Council of the City of San Diego, 1907, 90 P. 44.

San Bernardino. Charter, Cal. Laws, 1905, p. 960-1. The procedure is similar to that of Los Angeles, except that the percentage is at least 30%.

Pasadena. Charter Amendment, Cal. Laws, 1905, p. 1022-3. The procedure for removal is similar to that of Los Angeles.

Fresno. Charter Amendment, Cal. Laws, 1905, p. 1057-9. The procedure is similar to that of Los Angeles, except that the percentage is at least 51%.

Santa Monica. Charter, Cal. Laws, 1907, p. 1047-8. The procedure is similar to that of Los Angeles, except that the percentage is at least 40%.

Alameda. Charter, Cal. Laws, 1907, p. 1101-3. The recall applies to appointive as well as elective of-

ficers. The percentage is based on the number of votes cast for mayor at the last preceding general municipal election. Otherwise the procedure is similar to that of Los Angeles.

Long Beach. Charter, Cal. Laws, 1907, p. 1230-33. The procedure is similar to that of Los Angeles, except that the percentage is at least 40%.

Vallejo. Charter Amendment, Cal. Laws, 1907, p. 1253-4. The procedure is similar to that of Los Angeles.

Riverside. Charter, Cal. Laws, 1907, p. 1345-7, The procedure for removal is similar to that of Los Angeles.

San Francisco. Charter Amendment, adopted Nov. 5, 1907. The procedure for removal is similar to that of Los Angeles, except that the percentage is at least 30%.

Idaho. The recall has been established through special legislation providing a municipal charter amendment for Lewiston.

Lewiston. Charter Amendment, Id. Laws, 1907, p. 358-60. The procedure for removal is similar to that of Los Angeles, with the following modifications: The cost for extra help for the examination of the petition is to be paid by the petitioners, who are required to deposit the sum necessary with the city clerk at the time of filing the petition. The amount is not to exceed \$100.00 and any surplus is to be returned to the persons by whom the money is deposited. No petition for removal may be filed until the person sought to be removed shall have been in office at least

ninety days, and no person may be required to stand for reelection more than once during the term for which he was elected.

Iowa. Laws, 1907, c. 48, sec. 18. The recall is provided for in the commission plan of municipal government established by general law. The commission system may be adopted by cities having a population of or exceeding 25,000 inhabitants. The procedure for the removal of elective officials is similar to that of Los Angeles, except that the percentage of qualified electors required to sign the petition is based on the number of votes cast for all candidates for the office of mayor at the last preceding general municipal election.

Des Moines adopted the commission plan of government, including the recall provision, at a special election held June 20, 1907.

South Dakota. Laws, 1907, c. 86. The recall is a provision of the commission form of municipal government established by general law. The commission system may be adopted by cities of the first, second, or third class, or by those having special charters.

The procedure for removal is similar to that of Los Angeles, except that the percentage required is 15%. The recall applies to directors of the board of education as well as to commissioners.

Texas. The recall is provided for in a number of municipal charters granted by special legislation.

Fort Worth. Charter, Tex. Special Laws, 1907, p. 130-1. The procedure is similar to that of Los Angeles, except that the petition for removal must be

signed by a least 20% of the qualified electors of the city. Since the municipal officers are elected at large under the commission system of government prevailing in Fort Worth, the required percentage is based upon the entire electorate of the city.

Denison. Charter, Tex. Special Laws, 1907, p. 361-2, and 366. Provision is made for the recall of the mayor and of the councilmen. The petition for removal must be signed by 20% of the qualified voters of the city. Within twenty days from the date of receiving the petition, the city council must call an election, which is to be conducted and the returns made the same as for other city elections. The incumbent is to be a candidate for reelection. The newly elected officer is to qualify for the office as provided by law.

Dallas. Charter, Tex. Special Laws, 1907, p. 621-2. The procedure for removal is similar to that of Los Angeles, except that the percentage required is 35%; and since the municipal officers are elected at large, this percentage is based on the entire vote cast for candidates for the office of mayor on the final ballot at the last preceding general municipal election. A majority of all votes cast at the election is necessary to elect. In case no candidate receives a majority at the first election, a second election must be held.

Washington. The recall has been adopted by a number of cities having the right to adopt freeholders' charters and charter amendments.

Const. 1889, art. 11, sec. 10. Under this section freeholders' charters may be adopted by cities having

a population of 20,000 or more. Such charters become the organic law of the city when adopted by the municipal electorate and need not be referred to the legislature for enactment.

Laws, 1903, c. 186. Any municipality having adopted a charter under the laws of the state, may adopt direct amendments to the city charter in respect to local affairs. Any petition for a proposed amendment must be signed by 15% of the qualified voters. The required percentage is to be based on the total number of votes cast at the last preceding general municipal election. The petition must be filed with the city clerk thirty days or more before the election at which it is to be voted upon. If approved by a majority of the local electors voting upon it, the amendment becomes part of the charter organic law governing the municipality.

The Seattle charter amendment for the recall was adopted under this law.

Seattle. Charter Amendment, adopted Mar. 6, 1906. This recall provision is in the form of an amendment to that part of the city charter which relates to the term of office of elective officials. The procedure for removal is similar to that of Los Angeles, except that any person competent to make affidavit may circulate petitions.

Everett. Charter, adopted Nov. 26, 1907. This charter incorporates a recall provision similar to that of Seattle.

The recall has also been provided for cities of the second class through general legislation.

Laws, 1907, c. 241, sec. 15. The law for the government of cities of the second class incorporates the following provisions for the recall of councilmen: Whenever three-fifths of all the qualified electors of any ward, as shown by the last general municipal election returns, shall petition for the recall of their councilman, the city council is required to call a special election in the ward to elect a councilman to take the place of the incumbent. Thereupon such election must be held. Should the councilman whose recall is petitioned for be defeated, he is required to vacate his office for the balance of the term in favor of the successful candidate. The petition for recall of councilmen must be signed only in the office of the city clerk, where the petition must be kept on file for that purpose, and all signatures must be appended within an interval of ten days.

SALIENT FEATURES

The provisions for the recall are very similar for the different cities whether secured through municipal or through state legislation.

Scope of recall

Elective officials. Usually the law provides for the removal of elective officials.

For typical provisions for the removal of any elective officer, compare Los Angeles, Cal. Laws, 1903, p. 574-5; San Diego, Cal. Laws, 1905, p. 922-3; San Bernardino, Cal. Laws, 1905, p. 960-1; Pasadena, Cal. Laws, 1905, p. 1022-3; Fresno, Cal. Laws, 1905, p. 1057-9; Santa Monica, Cal. Laws, 1907, p. 1047-8; Long Beach, Cal. Laws, 1907, p. 1230-33; Riverside, Cal. Laws 1907, p. 1345-7; Seattle, Charter Amendment adopted March 6, 1906; Lewiston, Id. Laws, 1907, p. 358-60; Fort Worth, Tex. Special Laws, 1907, p. 130-1; Dallas, Tex. Special Laws, 1907, p. 621-2.

Also compare the general provisions for Ia. Laws, 1907, c. 48; and S. D. Laws, 1907, c. 86.

The charter provision for Denison, Tex. Special Laws, 1907, p. 361-6, specifically mentions the mayor and the councilmen as subject to the recall, while Wash. Laws, 1907, c. 241, sec. 15, provides for the recall of councilmen only.

The S. D. provision, Laws, 1907, c. 86, specifically includes directors of boards of education.

In cities where the recall is established under the commission form of government, provision is generally made for the removal of the commissioners and other elective officials. For typical cases, compare the provisions for Ia. Laws, 1907, c. 48, sec. 18; and S. D. Laws, 1907, c. 86.

Appointive officials. In certain cases the law also applies to the holder of any appointive office,

See Cal. Laws, 1907, p. 1101-3, for the charter provision of Alameda.

Prohibition of repeated recalls

The possible misuse of the recall is provided against by the requirement that no petition for removal be filed until the person sought to be removed has been in office for a stated period, and that no person be required to stand for reelection more than once during the term for which he was elected.

See Id. Laws, 1907, p. 358-60.

Procedure for petition

Contents of petition. It is generally the rule that the petition must include a demand for removal and must set forth the grounds for which the removal is sought.

For typical cases, compare the provisions for Los Angeles,, Seattle, Des Moines, and Fort Worth.

Qualifications of signers. Any elector qualified to vote for a successor of the incumbent may sign removal petitions.

See Davenport v. City of Los Angeles, et al., 1905, 146 Cal. 508.

Percentage of voters. The percentage of voters required to sign petitions ranges from 15% to 60%.

The percentages are 15% for S. D. Laws, 1907, c. 86; 20% for Denison and Fort Worth; 25% for Los Angeles, Alameda, Pasadena, San Diego, Riverside, Vallejo, Seattle, Lewiston, and Des Moines (Ia. Laws, 1907, c. 48, sec. 18); 30% for San Bernardino and San Francisco; 35% for Dallas; 40% for Long Beach and Santa Monica; 51% for Fresno; and 60% for second class cities of Wash. (Laws, 1907, c. 241, sec. 15).

Basis of percentage. The required percentage of signers is usually based upon the entire vote cast at the last preceding general municipal election for all

candidates for the office the incumbent of which is sought to be removed.

In cities in which municipal officers are elected at large, the percentage is frequently based upon the vote cast for all candidates for the office of mayor. Compare the provisions for Ia. Laws, 1907, c. 48, sec. 18; for S. D. Laws, 1907, c. 86; and for Fort Worth, Denison, and Dallas, Tex. Special Laws, p. 130-1; 361-2, 366; and 621-2.

Verification of signatures. Generally the signatures to the petition need not all be appended to one paper, but each signer is required to add to his signature his place of residence, giving the street and number. Each paper must be certified to by an affidavit to the effect that the statements therein made are true and that the signatures are genuine.

For different requirements for the verification of signatures, see the provisions for Los Angeles, Cal. Laws, 1903, p. 574-5; Seattle Charter Amendment, adopted, March 6, 1906; and Lewiston, Id. Laws, 1907, p. 358-60.

Filing. Provision is generally made for the filing of the petition with some designated officer, usually the city clerk.

Examination. Within a prescribed time the proper officer is required to examine the petition to ascertain whether it is signed by the requisite number of qualified electors.

Time. The time limit is usually fixed within ten days. Assistance. Extra help must be allowed if necessary for the examination of the petition. Generally the extra expense is paid by the city. Under the Idaho law, 1907, p. 358-60, the cost for extra help must be paid by the petitioners.

Certificate of result. The city clerk or other designated official must attach his certificate to the petition showing the result of the examination.

Amendment of petition. If the petition is shown to be insufficient it may be amended. After amend-

ment, the clerk is required to examine the amended petition, and if it is still insufficient, it is to be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect.

For typical cases, compare the provisions of Los Angeles, Seattle, Lewiston, Des Moines, and Fort Worth.

Also compare the provisions of Schaffhausen (Switzerland), Law of October 1, 1904.

Transmission of petition to council. If the petition is shown to be sufficient, it must be transmitted to the council without delay.

This provision of the Los Angeles charter has been generally followed.

Removal election

If the petition is sufficient, the municipal council is required to order an election.

See Good v. Common Council of the City of San Diego, 1907, 90 P. 44.

Time. Generally the date for holding the election is to be fixed by the council within a specified time from the date of the certificate that a sufficient petition is filed.

Usually the time limit is fixed at not less than thirty nor more than forty days.

Candidates. The person sought to be removed may be a candidate to succeed himself, and, unless he requests otherwise in writing, his name must be placed on the official ballot without nomination.

For typical cases, compare Los Angeles, Seattle, Lewiston, Des Moines, and Fort Worth.

Manner of conducting election. Recall elections are conducted, returned, and the results thereof declared, in all respects as are other city elections.

THE RECALL

Tenure of office

Removal of incumbent. Unless the incumbent receives the highest number of votes, he is deemed to be removed from office upon the qualification of his successor.

Term of successor. The successor of any officer removed through the recall is to hold office during the unexpired term of his predecessor.

Compare the provisions in Aargau, Cantonal Const. 1885, art. 29, and in Schaffhausen, Law of October 1, 1904. Similar provisions are found in Berne, Law of February 20, 1851

Vacancy of office. In case the party who receives the highest number of votes fails to qualify within a prescribed time after receiving notice of election, the office is deemed vacant, and is to be filled in accordance with the general law for filling vacancies.





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PRIMARY ELECTIONS

THE TEST OF PARTY AFFILIATION

MARGARET A. SCHAFFNER

MADISON WISCONSIN



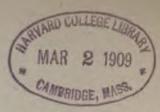
PRIMARY ELECTIONS

THE TEST OF PARTY AFFILIATION

MARGARET A. SCHAFFNER

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Prepared with the co-operation of the Political Science
Department of the University of Wisconsin

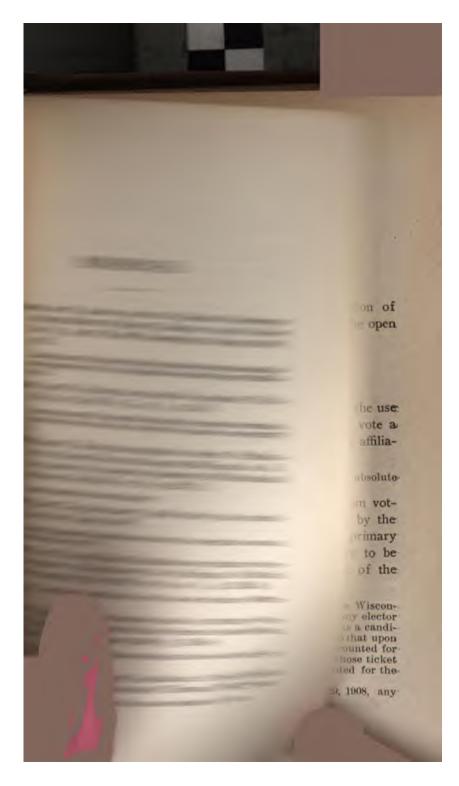
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Quarterly Journal of Economics.

CONTENTS

REFERENCES	PAG
NATURE OF THE TEST	
LAWS AND JUDICIAL DECISIONS	



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NATURE OF THE TEST

Primary election laws deal with the question of party allegiance from the two standpoints of the open and the closed primary.

OPEN PRIMARY

Secrecy in voting. Under the open primary the use of the Australian ballot enables an elector to vote a party primary ticket without disclosing his party affiliation.

See Wisconsin Laws, 1903, c. 451 under which absolutesecrery in voting is secured.

Party affiliation. Electors are prevented from voting for more than one party at any primary by the method of counting the votes under the open primary laws which generally provide that ballots are to be counted for any person only as a candidate of the party upon whose ticket his name is written.

The Missouri law (1907, p. 263, sec. 18) follows the Wisconsin plan (Laws, 1903, c. 451) by providing that if any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written, this ballot is to be counted for the person only as a candidate of the party upon whose ticket his name is written and is in no case to be counted for the person as a candidate upon any other ticket.

In Oklahoma under the law approved May 29, 1908, any

qualified elector offering to vote at a primary is to designate the party ticket he desires to vote and is to receive the ticket called for.

Non-partisan municipal primaries. A tendency toward non-partisan primaries for municipalities is shown in recent legislation,

Compare the laws of Ia. 1907, c. 48 and Wis. 1907, c. 670.

CLOSED PRIMARY

Under the closed primary the nature of the test may be considered: 1st. from the standpoint of the authority prescribing the test, 2nd. from the standpoint of the voter subscribing to the test of party allegiance. From both standpoints the nature of the record which is kept of the voter's declaration of affiliation is significant.

Authority prescribing test

Party authority. Quite frequently the prescription of the test for participation in primary elections is left to the party authorities. This is particularly true in many of the Southern states where direct primaries are more generally optional or permissive rather than compulsory. However a number of compulsory direct primary laws also leave the prescription of the test to the governing authority of the party.

For typical laws which leave the prescription of the test to the party authorities compare the provisions of: Ala. Laws, 1903, No. 417; Ark. Dig. of St., 1904, sec. 2892-4; Fla. Laws, 1901, c. 5014, as amend. by Laws, 1903, c. 5248, as amend. by Laws, 1905, c. 5471; Ga. Laws, 1890-1, p. 210; Tenn. Laws, 1901, c. 12 and c. 39 and Laws, 1907, c. 422; and Va. Pollard's Code, 1904, sec. 1220. Legislature. In a number of states the test of party affiliation is entirely prescribed by the legislature.

Compare the laws of: Ariz. Laws, 1905, c. 68: Ill. Laws, 1908, p. —: Ind. Laws, 1907, c. 282: Ia. Laws, 1907, c. 51: Kan. Laws, 1908, (Extra Sess.) c. 54: Md. Code of Pub. Gen. Laws, 1904 (new section added, Sess. of 1908), sec. 160 G; Mich. Laws, Ex. Sess. 1907, No. 4: Minn. Rev. Laws, 1905, sec. 192: Neb. Laws, 1907, c. 52: N. J. Laws, 1898, c. 130 as amend. by Laws, 1903, c. 248, as amend. by Laws, 1906, c. 235: N. D. Laws, 1907, c. 109; Ore. Laws, 1905, c. 1: Pa. Laws, 1906, No. 10: S. D. Laws, 1907, c. 139; Tex. Laws, 1905, 1st. Called Sess. c. 11, as amend. by Laws, 1907, c. 177, sec. 114 a: and Wash. Laws 1907, c. 209.

Party authority and legislature. Quite generally the legislature prescribes only a part of the test and permits the party authorities to impose additional requirements.

For typical laws see: Cal. Const. (Amend. 1900) art. 2, sec. 21, Laws, 1907, c. 340 and c. 352; Del. Laws, 1897, c. 393, as amend. by Laws, 1903, c. 285; La. Laws, 1906, No. 49; Mass, Laws, 1907, c. 560; Miss. Code, 1906, sec. 3717; and R. I. Laws, 1902, c. 1078.

Voter's declaration

The voter's declaration of party affiliation may relate to past allegiance, to present affiliation, to future intention, or to some combination of past, present, or future action. The laws for the different states vary greatly on this point.

Past allegiance. Some of the laws require a declaration of past affiliation only, on the part of the voter.

For typical provisions compare the laws of Ohio, 1908, (approved Apr. 28) and of Pa. Laws, 1906, No. 10.

In Ohio the voter's affiliation is determined by his vote at the last general election "held in even numbered years."

In Pa. he must have voted for a majority of the candidates of the party at the last general election at which he voted.

Present affiliation, Other laws provide that the voter declare only his present allegiance.

Compare the laws of Kan. 1908, (Extra Sess.) c. 54; N. D. Laws, 1907, c. 109; and Wy. Rev. St. 1899, sec. 223, as amend. by Laws, 1907, c. 100.

Future intention. In certain cases a declaration of intention to support the party at the ensuing election is the only requirement.

See Wash. Laws, 1907, c. 209, for a typical case.

Past action and present affiliation. A declaration as to past action as well as a statement of present affiliation is prescribed in a number of states.

Under the Ill. law enacted in 1908, the voter, if challenged, is required to swear or affirm not only that he is a member of the party, but also that he has not voted at a primary of another political party within two years.

Past action and future intention. In addition to declaring his past party allegiance certain states also require the voter to pledge his support to the party at the next ensuing election.

Compare the laws of Ind. Laws, 1907, c. 282; Minn. Rev.

Laws, 1905, sec. 192; and Miss. Code, 1906, sec. 3717.

Under the Mississippi law the voter must have "been in accord" with the party during the preceding two years, and must agree to support nominations, in which he participates, at the ensuing election.

Present affiliation and future intention. The test prescribed in some states requires a declaration of present affiliation together with a pledge of future support.

See the laws of Ariz. 1905, c. 68; La. Laws, 1906, No. 49; S. D. Laws, 1907, c. 139; and Tex. Laws, 1905, 1st Called Sess. c. 11, as amend. by Laws, 1907, c. 177, sec. 114a.

Past, present, and future affiliation. Certain states require a definite declaration with respect to past allegiance, present affiliation, and future intention to support the party with whom the voter desires to act at any primary election.

Compare the provisions of Mass. Laws, 1907, c. 560; and N. J. Laws, 1898, c. 139, as amend. by Laws, 1903, c. 248, as amend. by laws, 1906, c. 235.

Also see Commonwealth v. Rogers, 1902, 181 Mass. 184 and Hopper v. Stack, 1903, 69 N. J. L. 562.

Record of declaration

Declaration at primary. Many of the primary laws merely require a declaration of party affiliation on the part of the voter at the time of the primary and do not make any provision for keeping a record of his declaration.

For typical laws compare: Ariz. Laws, 1905, c. 68: III Laws, 1908, p. --; Ind. Laws, 1907, c. 282; Kan. Laws, 1908, (Extra Sess.) c. 54: Minn. Rev. Laws, 1905, sec. 192 and Laws, 1907, c. 226: N. D. Laws, 1907, c. 109: Pa. Laws, 1906, No. 10; S. D. Laws, 1907, c. 139: Tex. Laws, 1905, 1st Called Sess. as amend. by Laws, 1907, c. 177, sec. 114a: Wash. Laws, 1907, c. 209.

Previous enrollment or registration. A party enrollment or registration of voters is required in a number of states. The enrollment, whether conducted according to party rules or under provision of law, affords a means of listing the party affiliation of all electors participating in primary elections.

The form of the record kept, varies from informal voting lists to elaborate systems for the permanent enrollment of party members.

Enrollment under party regulation. See laws for S. C. Civ. Code, 1902, sec. 258, as amend, by Laws, 1903, No. 8: also see N. C. local acts, which require party registration of voters in certain localities.

Enrollment under Law. For different methods of party registration required under law compare the provisions of: Cal. Laws, 1907, c. 340 and e. 352; Del. Laws, 1897, c. 393, as amend. by Laws, 1903, c. 285; Ia. Laws, 1907, c. 51; Ky. Carroll's St. 1903, secs. 1553-59; Mass. Laws, 1907, c. 560; Mich. Laws, Ex. Session, 1907, No. 4; Neb. Laws, 1907, c. 52; and Ore. Laws, 1905, c. 1.

What constitutes a reasonable test

As the right to participate in making nominations is a part of the right to vote the question arises, what constitutes a reasonable test of party affiliation? So far the courts have not come to any uniform conclusions in their decisions on this point.

For recent decisions see: Commonwealth v. Rogers, 1902, 181 Mass. 184; State v. Moore, 1902, 87 Minn. 308; Hopper v. Stack, 1903, 69 N. J. L. 562; Rebstock v. Superior Court of City and County of San Francisco, 1905, 146 Cal. 308; State v. Drexel, 1905, 74 Neb. 776; Attorney Gen. ex rel. Wood v. Rowe, 1905, 27 R. I. 360; Schostag v. Cator, 1907, 151 Cal. 600; Katz v. Fitzgerald (Cal.) 1907, 93 Pac. 112; Freeman Board of Registry and Election of Metuchen (N. J.) 1907, 67 At. 713; State ex rel. Labauve v. Michel (La.) 1908, 46 So. 430; Morrow v. Wipe (S. D.) 1908, 115 N. W. 1121.

LAWS AND JUDICIAL DECISIONS

United States

Alabama. Laws, 1903, no. 417, sec. 10. Qualified electors under the general election laws have the right to participate in primary elections subject to such political qualifications as may be prescribed by the party authorities.

Arizona. Laws, 1905, c. 68, secs. 11 and 13. To vote at a primary election the elector must declare that he is a member of the political party holding the primary and that he expects to support the regular ticket of such political party at the next general or special election.

Arkansas. Dig. of St. 1904, secs. 2892—4. Leaves the prescription of the test for participation in party primaries to the party authorities.

California. Const. (Amend. 1900) art. 2, sec. 2½"The legislature shall have the power . . . to
determine the tests and conditions upon which electors, political parties, or organizations of voters may
participate in any such primary election . . . or
the legislature may delegate the power to determine
such tests or conditions at primary elections, to the
various political parties participating therein. . ."

See Rebstock v. Superior Court of City and County of San Francisco, 1905, 146 Cal. 308. (Interpreting c. 198, Laws of 1901.)

Laws, 1907, c. 340. The governing committee of any political party when filing its application for a place on the primary official ballot is required to file a resolution prescribing the party test necessary for an elector to vote for the delegates to the nominating convention of such party. Persons not possessing the qualifications prescribed may not vote for such party delegates.

A person desiring to vote at any primary election on behalf of any party or for any delegates to any convention is required to write (or have written) on the roster of voters, his name and address and the name of the political party for whose candidates he in good faith intends to vote at the election for which the primary is held.

If challenged, his right to vote must be denied unless he prescribes to the test required by the resolution of the committee of the political party for whose candidates he desires to vote.

The roster of voters must be delivered to the county clerk or registrar of voters and kept as a public record for public inspection for a period of at least two years.

Laws, 1907, c. 352. At the time of registering and of transferring registration, in all places where the primary election law is in force, each elector must declare the name of the political party with which he intends to affiliate at the ensuing primary election or

elections, and the name of such political party must be stated in the affidavit of registration. If the elector declines to state the fact, the fact of such declination is likewise to be stated and no person is entitled to vote at any primary election (by virtue of such registration) unless he has stated the name of the political party with which he intends to affiliate, at the time of such registration. No elector is to be permitted to vote on behalf of any party other than the party so designated in the registration.

In case any elector declines to designate or changes his political affiliation, he is entitled to have the change recorded prior to the close of the registration upon application to the county clerk or registrar of voters. Such application is to be made in person and the elector is required to make affidavit substantially in the following form:

Prohibiting one who has voted at a primary election from

The provision requiring an elector at the time of registration to declare his party affiliation in order to be entitled to vote at a primary, is not void for unreasonableness in that it precludes an elector who changes his party affiliation after registration from voting with his new party. Nor is it void as a violation of Const. art. 2, sec. 1, in that it in effect provides an additional qualification to those prescribed therein for electors. Schostag v. Cator. 1907, 151 Cal. 600.

signing a petition for another candidate is not unconstitutional as providing an arbitrary classification of voters. Katz v. Fitzgerald, (Cal.) 1907, 93 Pac. 112.

Colorado. Mills, Ann. St. 1891, sec. 1711. (Not direct.) Excludes any voter from voting at a primary election, who is at the time a member in good faith of a different political party than the one holding such caucus, convention or primary election. The question of the good faith of the voter is to be left to the jury.

See, In re Nominations to Public Offices, 1886, 9 Col. 631.

Connecticut. Laws, 1905, c. 273. (Not direct.)

A party registration is required previous to the primary.

Qualified electors making application for enrollment are to be listed according to their declared political preference. After the completion of each enrollment, the registrars are required to file twenty-five copies of each party list with the town clerk and are further required to deliver to the chairman of the town committee of each political party which cast 10% or more of the total vote of the town at the last general election, a sufficient number of copies to supply the chairman or clerk of each political primary or caucus to be held before the making of the next enrollment list. In case there is no chairman of a town committee of any political party coming under the provisions of the act then the town clerk is required to furnish the chairman or clerk of each caucus or primary meeting with the party list.

Upon oral or written application to the registrars any elector enrolled as a member of a party may have his name transferred to any other party list as he may direct.

Any person made a voter after a regular session of the registrars and prior to the election next succeeding such session may secure a certificate showing that he is entitled to enrollment upon the list of the party named in the application. The certificate is to have the same effect as though he had been enrolled, and at the time of making the next corrected enrollment list the registrars are to transfer any such name to the regular party list unless otherwise directed by the elector.

Special Law, 1907, no. 321, provides for direct nominations in the town of Manchester.

De'aware. Laws, 1897, c. 393, as amend. by Laws, 1903, c. 285. (New Castle Co. and the City of Wilmington.) If challenged, the person offering to vote must swear or affirm that he is a legally qualified voter under the rules of the party holding the primary. A system of party registration is provided for and no person whose name is not registered in the "voting books of qualified voters for primary elections" is permitted to vote in any primary.

Florida. Laws, 1901, c. 5014, as amend. by Laws, 1903. c. 5248, as amend. by Laws, 1905, c. 5471. The executive or standing committee calling a party primary may declare the terms or conditions on which legal electors, offering to vote at such elections are to be recorded and taken as proper members of the party at whose expense and in whose interest such primary election has been called.

Georgia. Laws, 1890-1, p. 210. If challenged, any elector offering to vote must take an oath that he is duly qualified to vote, according to the rules of the party, holding the primary election.

Idaho. Laws, 1903, p. 360. (Not direct.) It is made unlawful for any person who was not affiliated with the party holding the primary at the last general election, to vote or take any part in such primary; provided that one who since the last election has become of age may vote if otherwise qualified. No person may vote at the primary of more than one political party during any calendar year.

Illinois. Laws, 1908. Any person offering to vote a primary, if challenged, is required to swear or affirm, that he is a member of, and affiliated with, the ______ party; that he has not voted at a primary of another political party within a period of two years; and that he has not signed any nomination petition for nomination of a candidate of any other political party and that he has not signed the nominating papers of any independent candidate for any office to be voted upon at that primary.

In addition to such affidavit the person challenged is required to produce the affidavit of one householder of the precinct who is a qualified voter at the primary and who is personally known or proved to the judges to be a householder in the precinct, who shall swear or affirm, that he verily believes the person challenged to be a member of and affiliated with the

Indiana. Laws, 1907, c. 282. Any elector offer-

ing to vote, if challenged, shall make affidavit that at the last preceding general election, he affiliated with the party holding the election, that he voted for a majority of the regular nominees of the party at such election, and that he intends to support and vote for the regular nominees of such party at the coming election; provided that first voters need not make declaration of past affiliation.

Iowa. Laws, 1907, c. 51, sec. 7. Under this law, the voter's selection of a party ballot, at the first primary, to be held in June, 1908, is to constitute the declaration of his party affiliation and it is made the duty of the primary election board to record his name and check his declaration of party affiliation on the poll books used by the clerks of the primary election board. This list, properly certified by the primary election board is to be returned to the county auditor for preservation. Copies of the names and party entries on such list together with the changes of party affiliation are to be used at subsequent primaries for determining with what party the voter has been enrolled and no voter enrolled for one political party is to be allowed to receive the ballot of any other party, but he may change his enrollment according to the provisions of the act. The county auditor is required to prepare, for each voting precinct two of the above mentioned lists duly certified by him and taken from the poll books of the last preceding primary election. He is required to deliver such list to the succeeding primary election boards in the year 1910 and biennially thereafter

at least one day prior to the day of the primary election. These lists together with the poll books of the primary election are to be returned to the county auditor in good condition within twenty-four hours after the primary to be preserved by him.

sec. 8. Any person who has thus declared his party affiliation is thereafter to be listed on the poll books as a member of that political party and while he is a resident of the same precinct he need not declare his party affiliation in succeeding primaries unless he desires to change his party affiliation. Any elector, who having declared his party affiliation desires to change the same, may, not less than ten days prior to the date of any primary, file a written declaration with the county auditor, stating his change of party affiliation and the auditor is required to enter a record of the change on the poll books of the last preceding election, and on the voting list. Any elector whose party affiliation has for any reason not been registered or any elector who has changed his residence to another precinct or a first voter is entitled to vote at any subsequent election in the same manner and upon the same terms as provided in sec. 7.

sec. 9. Any elector whose party affiliation has been recorded and who desires to change his affiliation on primary election day, is subject to challenge. If challenged, he must swear or affirm that he has in good faith changed his party affiliation and desires to be a member of the — , and if he takes such oath, he is thereupon to be given a ticket of

such political party and the clerks of the primary election are required to change his enrollment of party affiliation accordingly.

Kansas. Laws, 1908, (Extra Sess.), c. 54, secs. 10 and 12. Any person offering to vote at a primary is required to announce the name of the political party for which he desires to vote and unless he is challenged, one of the judges is forthwith to give him such party ticket. If challenged, he must make an affidavit that he is a member of and affiliated with the —— party, that he has not signed the petition of a member of any other party, and that he has not signed the nominating petition of an independent candidate for any office for which candidates are to be voted for at that primary election.

Kentucky. Carroll's St. 1903, secs. 1553-59. The party authorities are authorized to prescribe qualifications for voters at party primaries. In order that none but those affiliating with and being members of any political party may participate in a party primary, a system of party registration is provided for localities in which a registration law is in force under the general law governing regular state elections.

The committee or governing authority of any political party desiring to hold a primary, has the right to have the names of all persons registered on the regular state registration books as affiliating with such party, copied into books provided by the committee. A book is to be provided for each precinct of the city and town in which it is proposed

to hold a primary. In case the committee or governing authority of any political party should decide to hold the primary before the time set for the registration of voters for that year under the provisions of the general law, the party registration for the previous year is to govern. Provision is also made for special registration of persons prevented by specified causes from registering at the regular time.

In all counties, districts or precincts in which no registration is held under the provisions of general law all legal electors have a right to vote at any party primary if they conform to the conditions and qualifications prescribed by the committee or governing authority of the political party holding the primary by applying at the polls of the precinct in which they reside and making known the fact that they conform to the conditions and qualifications that have been prescribed.

Louisiana. Laws, 1906, no. 49, secs. 9 and 10. Qualifications of voters at primaries are the same as required for electors at general elections, subject to additional political qualifications which may be prescribed by the state central committees of the respective political parties. None but those affiliating with, and beings members of any political party are to be permitted to participate in any primary election held by such political party. The commissioners of election are required to ask every person offering to vote, whether or not he is a member of such political party and whether or not he will support the nominees of such primary election, and he is

not to be permitted to vote unless he answers both questions in the affirmative.

This act is not unconstitutional because it requires voters at primaries to promise that they will support the nominees. State ex rel. Labauve v. Michel, (La.) 1908, 46 So. 430.

Maine. Laws, 1903, c. 214. Party enrollment is a prerequisite for voting in any political caucus. Any person who is a legal voter may enroll himself as a member of any political party by filing with the clerk of the 'own of which he is a legal voter a dec'aration in writing signed by himself substantially as follows: "I, — being a legal voter of — hereby elect to be enrolled as a member of the — party. The following statment of name, place of last enrollment, if any, and party of last enrollment if any, is true."

A new enrollment may be made at any time but the person making such new enrollment may not vote in any political caucus within six months thereafter if he designates a different political party from that named by him in the preceding enrollment. The clerk of the town where the enrollment is made is required to record the enrollment of members of each political party in a separate book and the records are to be open to the public.

Voting lists used in the election next preceding any caucus are to be used as check lists at the caucuses if the town committee so provide in the call and the committee is required to provide for the use of such lists upon the written request of a specified number of voters of the party.

Maryland. Code of Pub. Gen. Laws, 1904 (new section added, Session of 1908), sec. 160 G. No person is permitted to vote in any primary election unless he is a registered voter and a member of the party at whose primary election he tenders his ballot. Any registered voter who at the last preceding election voted for the presidential electors or the governor of the state or comptroller or other state candidate or the county candidates of the party at whose primary he tenders his ballot, or any registered voter who attains the age of twenty-one years prior to the next election, or any voter who having failed to vote at the last election declares his intention to vote at the next succeeding election for the candidates named by the party at whose election he tenders his ballot is to be deemed a member of such party and entitled to vote at such primary election. After an elector has voted his name is to be entered in the poll books provided for by the governing body of the party holding the election.

Massachusetts.

The provision forbidding any one to vote at a primary who has taken part in a primary of another political party within twelve months is a reasonable test of party affiliation. Commonwealth v. Rogers 1902, 181 Mass. 184.

Laws, 1907, c. 560, sec. 93. Each city or town committee may make reasonable regulations, not inconsistent with law, to determine membership in the party, and to restrain persons not entitled to vote at caucuses from attendance thereat or taking part therein. But no political committee may prevent any voter from participating in the caucus of its party

for the reason that the voter has supported an independent candidate for political office.

sec. 101. No person having voted in the caucus of one political party is entitled to vote or take part in the caucus of another political party within twelve months, except that voting or taking part in the caucuses of any municipal party by any voter is not to effect his legal right to vote or to take part in the caucuses of any other political party whether national, state, or municipal for any other election; and having voted or taken part in the caucus of another political party for any previous election whether city. state or national is not to effect his right to vote or take part in the caucus of any municipal party. No voter shall be prevented from voting or participating in any caucus if he takes an oath that he is a member of the political party holding the caucus and intends to vote for its candidates at the polls at the election next ensuing and that he has not taken part or voted in the caucus of any other political party for twelve months last passed.

sec. 156. Each voter's party affiliation is to be checked on the voting list used by the ballot clerks and the list is to be returned to the election commissioners in Boston or to the city or town clerks in other places for preservation during succeeding year. A copy of the party entries on such list is to be used at subsequent primaries for determining with what party the voter has been enrolled. Any elector may change his enrollment by appearing before the election commissioners in Boston or before the city or

town clerks in other places and requesting in writing to have his enrollment changed to another party but such change is not to take effect until ninety days after the voter so appears; but the political party enrollment of a voter is not to preclude him from receiving at a primary the ballot of any municipal party, but in no primary is he to receive more than one party ballot. No voter who denies the accuracy of his enrollment is to be permitted to vote until he takes an oath that he is a member of the —— party and that he is incorrectly enrolled as a member of another political party.

Michigan. Laws, Extra Sess. 1907, no. 4, secs. 2, 6, 9, 10, 13 and 35. No person may vote at a primary election unless he is enrolled as a member of a particular political party. The various boards of registration provided for by the general election law are constituted an enrollment board. The local custodian of the general registration books of each election precinct is made the custodian of the party enrollment book, and he is required to forward copies of the party enrollment to the county clerk and to the secretary of state.

The custodian of the enrollment book is required to deliver the same to the board of enrollment for the purpose of registration and correction and the enrollment board is required to enroll all qualified electors who make application for and who are entitled to enrollment as members of any political party. Whenever any qualified elector applies for enrollment but neglects or refuses to give the name of his

party or if he has none, he is to be enrolled as an independent.

Whenever an enrolled voter has changed his past affiliation and desires to be enrolled as a member of another party, he may personally make application for re-enrollment to the enrollment board of primary election inspectors and the board is thereupon required to re-enroll the voter.

Any qualified elector offering to vote is to be furnished a ballot of the political party with which he is enrolled and no other. In case he is challenged, he is required to take an oath that he is a member of the party and that he believes in the principles of the party.

For local laws, see Local Acts, 1905, no. 476, as amended by Local Acts, 1907, no. 754 (Alpena Co.): Local Acts, 1903, no. 326, sec. 12 (Kent Co.): Local Acts, 1903, no. 502, sec. 12 (Muskegon Co.): Local Acts, 1905, no. 345, sec. 11 (Wayne Co.).

The local acts for these counties uniformly require that any elector offering to vote, if challenged, must take an oath that he is in sympathy with the principles of the party and that he expects to vote the party ticket at the next ensuing election.

Minnesota.

The legislature may within reasonable limits regulate the means by which partisan efforts should be protected in exercising individual preferences for party candidates. State v. Moore, 1902, 87 Minn. 308. (Interpreting c. 216, Laws of 1901).

Rev. Laws, 1905, sec. 192. Any person offering to vote the ballot of any political party at a primary, if challenged, is required to declare under oath that he generally supported such political party at the last election and intends to support it at the next ensu-

ing election. When voting for the first time he is not required to declare his past political affiliation.

Mississippi. Code, 1906, sec. 3717. No person is eligible to participate in any primary election unless he intends to support nominations in which he participates, has been in accord with the party holding such primary within the two preceding years, and is not excluded from such primary by any regulation of the state executive committee of the party holding such primary. Any member of the party holding the primary or any primary election officer may challenge any person offering to vote and cause him to answer, under oath, questions relating to his qualifications.

Missouri. Laws, 1907, p. 263, sec. 18. At all primaries as many separate tickets are to be provided as there are parties entitled to participate and also a non-partisan ticket upon which are to be printed the names of all persons for whom nomination papers have been filed who are not candidates for any political party. Each qualified elector is entitled to receive from the judges of election one ballot of the political party participating in such election for which he desires to vote.

To prevent any elector from voting for more than one party at any primary, the law provides that if any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written this ballot is to be counted for such person only as a candidate of the party upon whose ticket his name is written and is in no case to be counted for such person as a candidate upon any other ticket.

Montana. Laws, 1901, p. 115, sec. 2. (Not direct.) Any elector offering to vote at any caucus or primary meeting, if challenged, is required to take an oath that he has been and is identified with the party holding the caucus or primary and that it is his intention bona fide to act with the party and identify himself with the same at the ensuing election and that he has not voted at any primary of any other political party whose candidates are to be voted for at the next general or special election.

Nebraska.

Making the right of an elector to participate in a primary depend upon his party affiliations is a legitimate exercise of legislative power and does not conflict with the fundamental law guaranting freedom in the exercise of the elective franchise. State v. Drexel, 1905, 74 Neb. 776.

Laws, 1907, c. 52, secs. 17-21. Every qualified elector desiring to vote at a primary election is required to state to the judges of the primary the political party with which he affiliates. If challenged, the elector is required to take an oath that politically he affiliates with the —— party and that he intends to support the candidates of that party at the coming election. The party affiliation of each voter at a primary is to be noted on the poll book.

Provision is also made for a system of registration of party affiliation. The supervisor of regular regis-

 $^{^{-1}\,\}mathrm{A}$ direct primary law enacted in 1905, c. 99, was repealed by c. 55, Laws of 1907.

trations is required to record the party affiliation given by each elector applying to be registered. The city clerk of each city wherein a registration of voters is required by law is required to compile an alphabetical list of the voters of each of the political parties in each precinct in the city and within five days after each day of registration he must furnish the chairman or secretary of each political committee of his city and county a certified copy of such lists and also keep the same accessible for public inspection. He must also on the day of the primary furnish to the officers of the primary election in each precinct a certified copy of such lists for the purpose of determining whether or not any person who desires to vote at such primary was registered at the last registration as affiliating with the party the ballot of which he desires to vote at such primary.

Nevada. Cutting's Comp. Laws, 1861–1900, secs. 1678–85. (Not direct.) The test of party affiliation is prescribed by the party authorities.

New Hampshire. Laws, 1905, c. 93. (Not direct.) The check list of party voters for use at any caucus is to be prepared by the local executive committee of the party holding the caucus and no person is to be permitted to vote unless his name is on the check list. Any person offerng to vote, if challenged, must subscribe to an oath that he intends to vote the ticket of the party holding the caucus at the next ensuing election. After the caucus the presiding officer is to file the check list with the city or town clerk and the clerk is to keep the list in his office

open to public inspection for a period of two months thereafter.

The board of registry and election are required to indicate the party affiliation of each elector voting at the primary.

The right to vote a secret ballot is neither a natural right nor a constitutional right; hence a legislative provision that a voter at a primary, if challenged, shall make affidavit that at the last general election at which he voted, he voted for a majority of the candidates of the party with which he is proposing to act, violates no constitutional right of such voter. Hopper v. Stack, 1903, 69 N. J. L. 562.

A voter may erase from his ballot any name or write thereon the name of any person for whom he desires to vote and there is nothing in the general object of the laws denying the right of a member of one party from voting for a member of another party as the nominee of such voter's party. Freeman v. Board of Registry and Elections of Metuchen (N. J.) 1907, 67 At. 713.

New Mexico.2

New York. Laws, 1896, c. 909, sec. 53, (Election Law). Voters at primaries in addition to legal qualifications must possess such other qualifications as are "authorized by the regulations and usuages" of the political party or independent body holding the primary.

The regulations of the party, so referred to, must be regularly adopted by the County Convention or by a committee duly authorized by such convention and the requirements as to qualifications cannot be in conflict with the provisions of the statute. The rules cannot be such as will exclude a member of a party who intends to vote for the candidates of the party at the next election nor can it be left to a majority or to the unanimous vote of the enrolling board to say whether or not a man may enroll. The requirements may provide that the applicant for enrollment must qualify under oath but if he does so qualify he must be enrolled and allowed to vote at the primary. If under oath he makes false statements his punishment must be other than refusing to enroll him. Brown v. Cole, 1907, 105 N. Y. Supp. 196.

Laws, 1898, c. 179, as amend. by Laws, 1899, c. 473, and Laws, 1900, c. 204 and c. 225; Laws 1903, c. 111; Laws, 1904, c. 488; Laws, 1905, c. 674; Laws, 1906, c. 227, and Laws, 1907, c. 744 (Primary Election Law). Also see Laws, 1902, c. 195 as amend. by Laws, 1906, c. 498 (Town Enrollment Act). Only electors who are duly enrolled as party members may participate in the primary elections of their respective parties. At the time of enrollment the elector must declare that he is "in general sympathy with the principles of the party" and that he intends generally to support the nominees of such party at

² No legislation relating to test of party affiliation at primary elections.

the next general election, state or national, and that he has "not enrolled with or participated in any primary election or convention of any other party" since the first day of the preceding year.

After the final meeting for registration the enrollment box is to be delivered to the custodian of primary records and the enrollments are to be keptsecret until after the next general election when the custodian is required to copy the party affiliation of each elector in the enrollment books for the election district in which such elector resides and the records are then to be thrown open for public inspection.

The custodian of primary records is also required to provide duplicate sets of enrollment books for each party to which the act is applicable.

Any qualified elector offering to vote is required to announce the party with which he is affiliated and if he is found to be duly enrolled as a member of such party in that primary district the Board of Inspectors are required to deliver to him the ballots of his party.

Persons who have voted at a regular Democratic or Republican village caucus are thereby disqualified to vote at any village caucus held by a different political paty. In refreund, 1907, 103 N. Y. Supp. 420.

North Carolina. The local acts which established direct primaries for separate counties or for groups of counties or for separate cities uniformly provide for some test of party affiliation for voters at primary elections. Generally the test is prescribed partly by the legislature and partly by the party authorities holding the primary. Some of the tests require the

voter to declare under oath that he will abide by the result of the primary. In certain localities the law requires party registration of voters under regulations prescribed by the party organization.

For typical local acts see Laws, 1901, c. 524 (Mecklenburg Co.); c. 752 (applies to the counties of: Anson, Cabarrus, Dare, Durham, Forsyth, Granville, Haywood, Henderson, Johnston, Northhampton, Orange, Pamlico, Richmond, Tyrrell, Wake and Washington): Laws, 1903, c. 123 and 793 (Richmond and Henderson Co's.); Laws, 1905, c. 146 (Craven Co.); c. 266 (Buncombe Co. and City of Ashville); c. 575 (City of Raleigh and Wake Co.); c. 795 and 837 (New Hanover Co. and City of Wilmington); Laws, 1907, c. 116 (Union and Ouslow Co's.); c. 190 (Rowan and Camden Co's.); c. 247 (Buncombe Co. and Ashville Twp.); c. 374 (Robeson Co.); c. 399 (Scotland Co.); c. 405 (Guilford Co. and City of Greensboro); c. 761 (Columbus Co.); c. 926 (Counties of Anson, Beaufort, Bladen, Columbus, Davidson, Durham, Halifax, Lenoir, Madison, Martin, Nash, Onslow and Wake).

North Dakota. Laws, 1907, c. 109, sec. 10. It is made unlawful for any person to call for or vote a ballot at a primary election, except the ballot representing the party or principle with which he affiliates, and any person offering to vote, if challenged, must make affidavit as to his party affiliations.

Ohio. Laws, 1908, p. 214-225. Any person offering to vote at a primary may be challenged on the ground that he has not previously affiliated with the party whose ticket he desires to vote and affiliation is to be determined by the vote of the elector making application to vote at the last general election held in even numbered years. If the judges, of the party to which the person asking the ticket claims affiliation, are not satisfied that he is a legal voter under this act they are to reject his vote. Any one attempting to vote at the primary election of any

political party, other than the political party with which he has affiliated as above defined, is to be fined not less than \$50.00 nor more than \$500.00, or to be imprisoned in the county jail not less than three months nor more than six months, or both.

Oklahoma. Laws, 1908, p. 358-376. Separate tickets are provided for the different political parties. Any qualified elector offering to vote is entitled to receive the party ticket he desires to vote upon making request therefor of the primary election inspector.

Oregon. Laws, 1905, c. 1 (adopted by initiative petition). The preamble to the law declares that "the members of every political party and voluntary political organization are rightfully entitled to know, that every person, who offers to take any part in the affairs or business of any political party or voluntary political organization in the state is in good faith a member of such party."

A system of party registration is provided for and it is made unlawful for any elector to vote or to offer to vote at any primary unless he is registered as a member of a political party.

No person who is not a qualified elector and a registered member of a party making its nominations under the provisions of this law is qualified to join in signing any petition for nomination, and no person is qualified to sign any nominating petition of any other political party for the primary than that with which he is registered. But no registered member of any party is to be prevented from signing a petition for the nomination of any independent or nonpartisan

candidate after the primary nor is any qualified elector to be prevented from signing petitions for more than one candidate for the same office on one party ticket.

Every qualified elector offering to vote at any primary is to be given a ballot of the political party with which he is registered as a member and he is not to be given a ballot of any other political party provided that no elector is to be deprived of the right to register and vote at any primary in the same manner that he is permitted by the general laws to register and vote at a general election.

If challenged, the elector is required to take an oath that he is in good faith a member of the political party with which he is registered.

Pennsylvania. Laws, 1906, no. 10, sec. 10. Each elector has the right to receive a ballot of the party for which he asks, provided that if he is challenged he must make oath or affirmation that at the last preceding general election at which he voted, he voted for a majority of the candidates of the party for whose ballot he asks.

Rhode Island. Laws, 1902, c. 1078, sec. 8 (not direct). (Applies to the cities of Providence, Newport, and Pawtucket.) In addition to the regulations prescribed by the party authorities, the law requires that the voter shall not have taken part in a caucus or voted at an election for a candidate of another party within fourteen calendar months.

See Attorney Gen. ex rel. Wood v. Rowe, 1905, 27 R. I. 360.

South Carolina. Civ. Code, 1902, secs. 255-7 as amend. by Laws, 1905, no. 409; Civ. Code, sec. 258 as amend. by Laws, 1903, no. 8; Crim. Code, sec. 278 as amend. by Laws, 1903, no. 73. The political qualifications for voters at primary elections are prescribed by the party authorities. The law requires a party registration in localities having a prescribed population.

This provision is a reasonable regulation and does not preclude a first voter from joining the party of his choice nor prohibit one who has previously voted from transferring his party allegiance, nor does it conflict with the Constitution in that it adds to the qualification of electors prescribed by the Constitution. Morrow v. Wipe (S. D.), 1908, 115 N. W. 1121

Tennessec. Laws, 1901, c. 12 and c. 39 and Laws, 1907, c. 422. Qualifications for voters, in addition to legal requirements, are prescribed by the party authorities holding the primary.

Texas. Laws, 1905, 1st Called Sess., c. 11, as amend. by Laws, 1907, c. 177, sec. 114 a. The following test of party affiliation must be placed on every official primary ballot: "I am a (inserting name of the political party or organization)

of which the voter is a member) and pledge myself to support the nominees of this primary."

Utah. Laws, 1899, c. 79, sec. 2 (not direct). No person is entitled to vote at any primary election unless he is a duly qualified voter under the prescribed rules and regulations of the political party holding the primary.

Vermont. Laws, 1904, no. 2 as amend. by Laws, 1906, no. 1 (not direct). Provides for party check lists to be used for determining the party affiliation of voters at caucuses. No person may vote at a caucus unless his name appears on the party list.

Virginia. Pollard's Code, 1904, sec. 1220. Qualifications for electors at primary elections are prescribed by the party authorities.

Washington. Laws, 1907, c. 209, secs. 11 and 12. Separate ballots are provided for the several political parties. Every qualified elector desiring to vote at a primary has the right to receive the ballot and only the ballot of the party for which he asks. In case he is challenged he is required to make oath or affirmation that he intends to affiliate with the party and that he intends generally to support the candidates of the party at the ensuing election.

West Virginia. Code, 1906, sec. 45. (Laws, 1891, c. 67.) (Not direct.) In order to vote at a party primary the elector must be a "known recognized, theretofore openly declared member of the party."

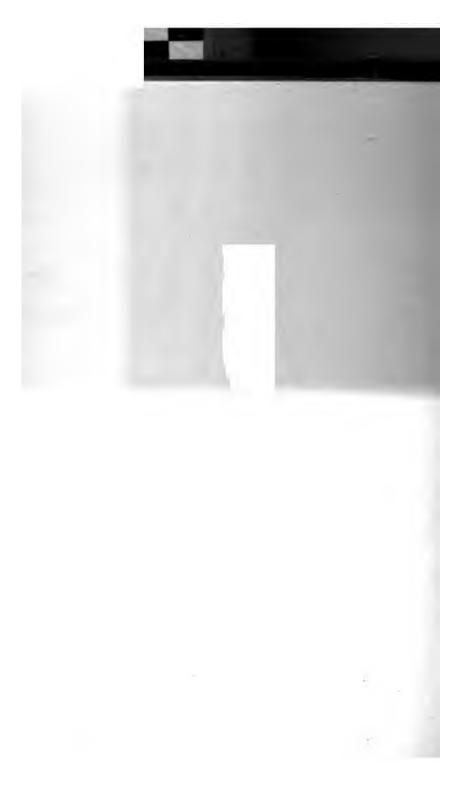
Wisconsin. Laws, 1903, c. 451. An Australian ballot is used at all primaries. This ballot is made up of as many tickets as there are parties entitled to

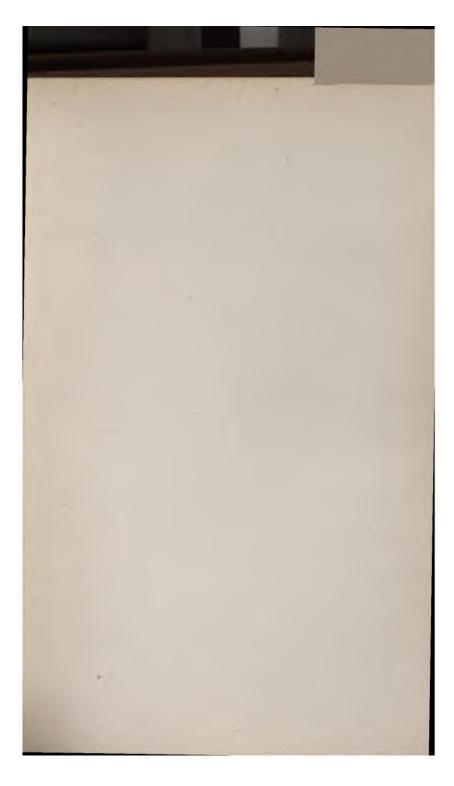
PRIMARY ELECTIONS

participate in the primary and also a nonpartisan ticket upon which are printed the names of all persons for whom nomination papers have been filed and who are not candidates for any political party. In voting, the elector detaches the ticket he intends to vote and deposits the remaining tickets in the blank ballot box.

To prevent electors from voting for more than one party at any primary the law provides that if any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written, this ballot is to be counted for such person only as a candidate of the party upon whose ticket his name is written and is in no case to be counted for such person as a candidate upon any other ticket.

Wyoming. Rev. St., 1899, sec. 223 as amend. by Laws, 1907, c. 100, sec. 1 (not direct). Any person offering to vote at any primary, if challenged as to his political faith, is required to make a sworn statement showing that his political faith is in accordance with the party of voters holding such meeting.

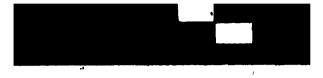












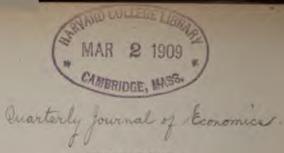
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PROPORTIONAL REPRESENTA-TION

ROY E. CURTIS

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CONTENTS

	PAGE
BIBLIOGRAPHY	4
HISTORY	5
England	5
Switzerland	6
United States	6
Other Countries	7
DEFINITIONS AND SYSTEMS	.9
Limited vote	9
Cumulative vote	9
Proxy system	10
Single untransferable vote	10
The quota	11
Preferential systems	12
List system.	14
LAWS	16
Limited vote	16
Cumulative vote	16
Single untransferable vote	17
Single transferable vote	17
Graduated system	19
List system	19
CONSTITUTIONAL RESTRICTIONS	24
Multiple districts	24
Limited and cumulative voting	25
Plurality elections	25
CONCLUSION	27

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A brief exposition of the principles and workings of this system of election, in the shape of "letters to an elector."

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HISTORY

"Proportional Representation" is representation in proportion to numerical strength. The term is applied to those systems in which representation is given to minorities as well as majorities, or, to all considerable groups of electors in proportion to their voting strength. The essential feature of proportional representation is the grouping of voters according to political ideas and interests rather than according to artificial geographical lines.

England

In 1780 the Duke of Richmond introduced a bill in Parliament including a clause for minority representation. In 1854 Lord John Russell introduced a motion in Parliament for the application of limited vote where three candidates were to be elected.1

In 1870 the cumulative vote was applied to elections for local boards of education.2

¹ Hansard (1854) vol. CXXXI.

² 33-34 Vic. c. 75 sec. 29, p. 455. Important works published in England on this subject were: 1854 J. G. Marshall. "Majorities and Minorities: Their Relative Rights:" 1859 Thos. Hare, "The Election of Representatives: Parliamentary and Mu-

In 1862 J. S. Mill. "Considerations on Representative Government," advocated proportional representation.

Switzerland

In 1846 Victor Considérant addressed the Grand Council of Geneva in an open letter "De la Sincérité du Gouvernment Représentatif, ou Exposition de l'Élection Véridique."

Neuchâtel. The limited vote was known here as early as 1867 and was used at that time for the election of candidates from which were chosen magistrates and "jurés."

Vaud. The same system was applied in this canton in 1867 for the election of "jurés."

In 1891, as a result of riots brought about by contests over elections, the Canton of Ticino adopted the "Free List." The same year Neuchâtel adopted the same system. Geneva followed in 1892; Fribourg and Zug in 1894; Soleure in 1895. Others have followed since, though proportional representation has been rejected for some cantons and for the federal assembly.

United States

The idea was here first presented in 1844 by Mr. Thos. Gilpin (Phila.) in his work "On the Representation of minorities of electors to act with the majority in elected assemblies."

In 1870 the Illinois Constitutional Convention adopted a scheme of electing members of the House of Representatives by Cumulative vote.⁸

¹ In 1861 M. Antoin Morin published "Un Noveau Systeme Électoral" (at Geneva) and in 1862 a work "De la Représentation des Minorités.

² See postea. "Laws." ³ Const. art. 4, sees, 7 and 8.

A New York law in 1874 provided for the election of aldermen in districts of three members each, no voter to vote for more than two.¹

Pennsylvania. In 1870 by special act provided for the use of the cumulative vote in the city of Bloomsburg for all offices of two or more incumbents.² The law was later amended to include other muncipalities.

In 1874 limited vote was applied to the election of police magistrates in Philadelphia.³ In 1875 the legislature provided for twenty-five courts with the same number of judges to be elected on a general ticket, the voter to be allowed to vote for two-thirds of the members to be elected.⁴

In 1893 an act was passed for the election of aldermen in Boston by limited vote.⁵

Other Countries

Brazil. A law of Oct. 20, 1875, established the limited vote for elections to the municipal, provincial, and national Assemblies.

Cuba. Limited vote was first introduced in Cuba in 1879.

Denmark adopted Proportional Representation for elections to the Parliament in 1855, and re-enacted the system for the Landsthing in 1867.

³ N. Y. Laws, 1874, c. 515, p. 704.

² Sess. Laws of Penn. 1870. No. 335, sec. 4, p. 343. Repealed 1882.

³ Sess. Laws, 1874. No. 147, sec. 2, p. 224.

⁴ Sess. Laws, 1875, No. 60, sec. 4, p. 57.

⁸ Mass, Acts, 1893, c. 473, p. 1409.

⁴ Laws of Oct. 2, 1855 and July 12, 1867.

Italy made use of the limited vote for elections to the Parliament from 1882 to 1891.

Malta. By ordinance of Dec. 13, 1861, limited vote was applied to the election of members of the council of seven; the elector to vote for only four candidates.

Portugal provided for the election of deputies by limited vote by a law of May 21, 1884.

Spain. Limited vote was introduced as early as 1878 for the election of deputies.

Nearly all the laws at present in force for proportional representation have been enacted since 1890. For a discussion of the laws see postea, "Laws."

DEFINITIONS AND SYSTEMS

All systems of proportional representation, real or so-called, require the election of more than one representative in a district. These districts are designated Multiple Districts; the ticket, the General Ticket.

Limited Vote (Restrictive System)

By this system a smaller number of votes is allowed to each elector than the number of members to be elected from the district.

[See laws of Brazil, Italy, Massachusetts, Pennsylvania, Portugal, Spain.]

This system is objected to as not proportional, on the ground that the number of members each party may elect is determined by the law itself without regard to the strength of the parties; e. g. where seven are to be elected and only five may be voted for, the majority party may always elect five.

Cumulative Vote

The voter is allowed as many votes as there are persons to be elected and may distribute such votes among the various candidates as he pleases, giving one to a candidate, all to one candidate, or otherwise.

[See law of Cape of Good Hope, Constitution of Illinois.]

Though representation is given minorities by this method, it is not necessarily proportional. A pre-election calculation for the guidance of voters is necessary to secure effective use of party strength. By failure to properly dispose of their votes the Republican party in the 9th district in Illinois in 1904 elected one candidate while the other party elected two, though the Republicans had a majority of the votes.

The main practical objection to both the limited and the cumulative vote is that they give greater power to the machines of the two large parties and entirely prevent independent movements.

Proxy System

This system allows but one vote to an elector and contemplates the election of only one representative by each faction or group. But the representative may cast in the legislature a number of votes proportionate to the number of electors supporting him at the polls. Those voting for unsuccessful candidates may transfer their support to successful candidates.

This system defeats the primary purpose of our legislative assemblies: deliberation.

The foregoing are no longer considered as methods of true proportional representation.

Single Untransferable Vote System

The simplest form of proportional representation. Each elector has but one vote in a multiple district. There is no electoral quota and no transfer of votes. Candidates getting the highest votes are elected. Gen-

erally proportional in operation, but possible for very popular man to attract so many votes from a party associate as to cause the latter's defeat by the candidate of another party, by reason of such waste of votes.

The Quota

The following systems are based on the idea of securing an effective use of practically all the votes cast. To accomplish this, calculations based on an "electoral quota" are made use of.

The quota is the number of votes sufficient to elect one representative.

The simple quota is obtained by dividing the total number of votes cast by the number of members to be elected. Thus, if a total of 50,000 votes is cast to elect five representatives, 10,000 would be the electoral quota.

[See laws of Cuba, Denmark, Fribourg, Neuchâtel, Zug]

The *Droop Quota* is obtained by dividing the total number of votes cast by the number of members to be elected plus one.

[See laws of Berne, Geneva, Moravia, Norway, Soleure, Tasmania, Ticino]

The d'Hondt quota is obtained by dividing the total number of votes cast for each political group successively by 1, 2, 3, 4, 5, etc. A number of the quotients so obtained in all groups equal to the number of representatives to be elected, is checked off; the lowest in magnitude of these quotients is the "electoral divisor" or quota.

12 - PROPORTIONAL REPRESENTATION

Suppose the parties to have respectively total votes of 50,000; 25,000; 20,000; 10,000. Dividing successively by 1, 2, 3, the following quotients are obtained:

50,000	25,000	20,000	10,000
25,000	12,500	10,000	5,000
16,666	8,333	6.666	3.333

Suppose there to be four representatives to be elected. Arrange the quotients in order of magnitude to the number of four. 20,000 will be found to be the quota.

[See laws of Belgium and Sweden]

Preferential Systems

Single transferable vote. Hare System (Andrae, Courtney, Lubbock, Spence, etc.) Each elector is allowed one effective vote but may number the candidates in the order of his preference. To each candidate, on the counting of the vote, is ascribed only so many of his "first choice" votes as are necessary to elect him (i. e. a number equal to the electoral quota), and the surplus, if any, is transferred to other candidates not yet elected, according to the second, or third choices indicated on the ballots so transferred. If the second preference has already been elected the third choice is counted, and so on. Surplus votes having been distributed and the full number of representatives not having been secured, candidates whose total vote is less than the quota are eliminated in the inverse order of their total votes, and their ballots transferred according to the above plan until a sufficient number has been elected.

[See laws of Denmark, Moravia, Tasmania]

This system is difficult to apply to large electoral districts because all the votes must be brought to a central bureau to be counted. A recount of the votes is impossible under the above plan as given. The wishes of many of the electors may be wholly ignored in the transfer of votes. The order in which the ballots are counted may materially affect the result. The system has the appearance of an ingenious juggle, though some of the laws have by certain provisions avoided some of the difficulties mentioned.

Substitute or Gove Method. By this method the elector casts but one vote and expresses no preferences. The transfer of votes is left to the candidates, who transfer their surplus votes, or those over the electoral quota, and their insufficient votes, or those under such quota, to other candidates. The order of such transfer is determined before the election by declarations by the various candidates of the names of those to whom they will make their transfers.

This method defeats the primary object of proportional representation by placing the results of the election largely in the hands of the candidates rather than in the hands of the people.

The d'Hondt quota is not applicable to "Single transferable vote" systems.

Graduated System (Preponderence of choice).

Burnitz Method. The elector votes for a number of candidates equal to the number to be elected, expressing preference. The first, second, third, etc., preferences of each candidate are counted separately. The totals so arrived at are divided, first choices by one,

second choices by two, third, by three, etc. The quotients added together give the "electoral quotient" or practical total vote of each candidate. The candidates receiving the highest elective quotients are elected.

[See law of Finland]

Cleveland method. This method differs from the Burnitz only in the value given the ballots, being multiple rather than fractional. Where, for instance, ten representatives are to be elected, first preference counts ten votes, and tenth preference one vote.

The Graduated system is exceptional in not requiring the use of the quota,

These two schemes will be found to result in proportional representation only when a party or considerable group of electors casts all its preferential votes in the same order. If they be distributed equally among the candidates one party may elect its whole list. When preferences are scattered haphazard the results are haphazard.

List System

This system is based on party lists or tickets. Political parties and other groups of electors put in nomination lists of candidates not exceeding the number to be elected.

Where the Single Vote is used each elector casts one vote which may be cast and count for the ticket as a whole, or may be cast for one of its candidates, and count both for that candidate and for the party as a whole.

[See law of Belgium]

Where the Multiple Vote is used each elector casts as many votes as there are candidates to be elected, and they count both for the candidate and for the party.

[See laws of Cuba, Norway, Sweden, and the Swiss Cantons]

In either case the total number of votes cast for each party, and the total vote given to each candidate individually is determined. Representation is given each party in proportion to its total vote. This may be done by dividing each party's vote by the electoral quota, the resulting quotient being its number of representatives. The quota may be the simple, the Droop or the d'Hondt.

To what individuals within the party the seats shall be assigned is determined by the total personal vote each has received; or it may be required that each candidate receive a number equal to the quota in order to be elected.

In cases where seats remain unfilled by division among the parties according to quota, the remaining seats may be distributed either to the parties having the highest remaining fractions of a quota, or to those having the highest remaining fractions over and above at least one quota.

Modifications of the system are noted in connection with the laws discussed under "Laws."

LAWS

Limited Vote

Brazil. Const. (Feb. 24, 1891) art. 28. Law of Jan. 26, 1892. Deputies, in districts where from three to five are to be elected, are chosen by limited vote.

Italy. Law of May 5, 1891. Limited vote is applied in provinces and municipalities to the election of councillors. When the number to be elected is five or more four-fifths of the number may be voted for.

Portugal. Law of Aug. 8, 1901. Limited vote is used in the election of deputies.

Spain. Law of June 26, 1890. Where from two to four deputies are elected from a single district the elector may vote for one less than the number to be elected; where more than four, for two less; where more than eight for three less.

Pennsylvania. Laws of 1875, no. 60, sec. 4 (p. 57). The limited vote is applied to the election of magistrates in the city of Philadelphia. Constitution art. 5, sec. 16, provides for the election of Supreme Court judges by limited vote, the elector to vote for six out of seven.

Cumulative Vote

Cape of Good Hope. (See report of W. Hely-Hutchinson to the Earl of Elgin, Brit, Miscell, Doc.

no. 3, 1907, p. 105.) Members of the Legislative Council are elected by Cumulative vote.

Illinois. Constitution art. 4, secs. 7 and 8. Members of the House of Representatives are elected in districts of three, each elector voting for two candidates.

The Cumulative vote has been applied to the election of the directors of private corporations by the constitutions of several states.

[Calif., Id., Ill., Ky., Miss., Mo., Mont., Neb., N. D., W. Va.]

Single Untransferable Vote System

Japan. Law of March, 1900. Applies to this system in the choice of the 379 members of the House of Commons in 47 districts electing from 5 to 15 members each. No quota nor transfer of votes is provided for. Candidates highest on the list are to be declared elected until seats are filled.

Single-transferable Vote

Denmark. Law of Feb. 7, 1901 (no. 16). A modification of the Hare system is used for the election of members to the Landsthing. The elimination of low candidates after the transfer of surplus votes is not provided in this law, but seats not filled by the transfer of surplus votes are divided among the remaining candidates according to their total vote. An exception to this rule is found, however, in the provision that no candidate may be elected on less than half the quota number. If the seats are still not all filled the final

process is a reading of all the votes again, crossing out the names of those already elected. The law provides for the simple quota.

Iceland. Law of Nov. 10, 1903. It is provided that for elections to the Town Councils in the Commercial Towns the d'Hondt method shall be employed.

Moravia. Law of Nov. 27, 1905. Thirty-six of 149 members in the Unicomerol Provincial Diet of the province are elected by the Hare system, with Droop quota. Voting is for three candidates in order of preference. Should the papers first drawn out to a number sufficient to elect three candidates, contain the names of the same three candidates, and the remaining papers all contain a different three, then the first two candidates only of the first list are elected, and another ballot is held to decide who is to fill the third vacancy, a simple majority deciding in this case.

Tasmania. Law of Nov., 1907. Elections for all members of the House of Assembly and for members of the Legislative Council from two multiple districts. This also is a modified Hare system with Droop quota. The transfer of votes is accomplished by a recount of not merely the surplus but of all, the "first choice" votes of a candidate who has been elected. The second choices thereon expressed are transfered to the various candidates subject to the provision that the transfer value of such votes shall be determined by dividing the surplus by the total vote of the elected candidate.

Graduated System

Finland. Law of July 20, 1906. Elections for the members of the Diet. Party lists are limited to a certain per cent of the number of representatives to be elected. Preferences are recorded for the various candidates by the voter, and the total vote of each candidate is determined according to the Burnitz method. Candidates are elected according to their total vote, without quota.

List System

Belgium. Law of Dec. 29, 1899. The list system with single vote is used here for the election of members of the chamber of Deputies and of the Senate.

The total vote of the party is made up of all votes cast for the list, both personal and ticket votes. The quota is determined by the d'Hondt method. The lists are allotted seats according the number of times their total votes contain the quota. No member is elected who has less votes than the quota. If there is not a sufficient number of such to fill all the seats list votes are added to the personal votes of the first candidate on the list not yet elected sufficient to elect him; the surplus if any is assigned to the second candidate, and so on until all the list votes have been assigned.

Cuba. Const. art. 39, Decree no. 331 (Apr. 1, 1908). A law for the election of representatives, and provincial and municipal councilmen by the List System with Multiple vote and simple quota. The voter may mark individual candidates or vote a straight

party ticket. Seats remaining unfilled after distributions by quota are allotted to parties having the largest remainders, providing such parties have at least one full quota.

Germany. Hesse-Darmstadt. Proportional Representation is applied in Hessen in the case of the election of assessors in Commercial and Industrial Tribunals; the law of July 6, 1904, makes it compulsory for the former; the law of June 30, 1901, makes it optional for the latter. The list system with multiple vote and simple quota is used.

It is provided in elections for the Geissen Industrial Tribunal that votes on all lists shall count for each candidate individually, but a corresponding number shall be deducted for the number of times his name is struck out on his own list.

Wiirtemberg. Mr. F. L. Cartwright reporting to Sir Edward Grey (Brit. Miscell. Doc. no. 3, 1907, p. 4) states that representatives are elected by a system of Proportional representation. The same system may be used also in municipal elections in cities of over 10,000 inhabitants.

Norway. Law of July 27, 1896, amd. May 29, 1901. A law for the electon of representatives in municipalities by the list system with multiple vote, allowing the voter to repeat (cumulate) the names once more than is done in the official list. The Droop quota is used.

Sweden. Bills of 1907 (have been passed once by both houses of the Diet). Member of the Diet, and County and Borough Councillors are elected by proportional representation. This bill is based on the List System, Multiple vote, and d'Hondt quota. It contains a novel scheme for the assignment of seats to candidates, which is as follows: Successive countings take place within each group working on the principle that a voting paper containing a name already classified on the list has on the second counting only half power, one which contains two names already classified has in subsequent countings only one third power, and so on.

[Suppose ballots cast for combinations of candidates in the following manner: K. D. S. 900; K. D. M. 300; D. S. M. 210; K. S. 60.

All the votes given to each candidate being counted at par: D. 1410, K, 1260; S. 1170; M 510. Classify D. as No. 1 and count again giving those ballots containing D.'s name one half value: K. S. 450; K. M. 150; S. M. 105; K. S. 60.

By this count: K. receives 660; S. receives 615; M. receives 225.

On the third count ballots containing both D. and K. are counted at one third, either alone at one half: S. 300; M. 100; S. M. 105; S. 30:

S. receives 435; M. 205. The order of candidates on this ticket is D. K. S. M.¹]

Switzerland. Bâle-Ville. Law of Jan. 1905 provides for the election of members of the Grand Council by the List System.

Berne. Law of Nov. 26, 1899, establishes the list

¹ Illustration from report of Sir R. Rodd to Sir Edward Gray. (See Brit, Miscell, Doc. 1907, No. 3, p. 54.

system for election to the General Council of the city of Berne. The quota used is the Droop quota. Names are voted for from all lists, the highest candidate winning.

Fribourg. Decree of Mar. 23, 1895: List system with simple quota for the election of members of the General Council in Town Communes.

The elector may vote for the candidates of various lists or may cast an incomplete ballot or a "straight ticket." The total vote of the candidates is made up of votes cast for them individually on the ballots of all lists. The total vote of the party is made up of all votes cast for the candidates of its list and all votes left blank on its list. That is the party receives the benefit of all votes not cast for members of another party list whether or not such votes be expressed on the ballot. Seats unfilled by the quota division are given to the party having the strongest remaining fraction.

Geneva. Law of July 6, 1892, amended Jan. 23, 1901. A law for the election of members of the Grand Council by the List System with Multiple vote and Droop quota. Candidates receiving the highest individual votes are elected. The voter may vote for members of different parties, his vote counting for the candidate and for the party under whose names the candidate is listed. Seats remaining unfilled after the distribution by quota are given to the parties having the highest fraction remaining.

Neuchâtel, Decree of Jan. 25, 1895. Members of the Grand Council are elected by List System with multiple vote, simple quota. No candidate is elected who has not received at least fifteen percent of the votes cast. Lists which have no candidate having at least fifteen percent of the total vote are eliminated.

Schwyz. Law of 1898 amended by law of 1907. The list system is used for elections to the cantonal Grand Council.

Soleure. Law of Mar. 17, 1895, for elections to the Grand Council and to Municipal councils by the List System with multiple vote and Droop quota. By this law the total vote of each party is determined by the number of tickets with the party name at the top, even though such ticket contains names from other lists. Seats remaining unfilled after assignment by quota are allotted to the parties having the highest total vote.

Ticino. Law of Feb. 9, 1891, amended 1892, 1895, 1898. Elections for the Grand Council, Commercial Councils, Executive Councils and District and cantonal jurés are held by the list system with Multiple vote and Droop quota. Remaining seats are given to the parties having the highest total vote.

Zug. Law of Sept. 21, 1896, for the election of members of the Grand Council, Executive Council, and for the election of judges. This law combines cumulative vote with the list system. Each elector has as many votes as there are members to elect, and can distribute them as he pleases. In case he does not dispose of all his votes the bureau of electors completes his ticket, dividing the remaining votes among his candidates. Seats are assigned by simple quota.

Seats remaining unfilled are given to the parties having the strongest fractions of a quota provided that number amounts to an absolute majority.

CONSTITUTIONAL RESTRICTIONS IN THE UNITED STATES

Multiple Districts

The constitutions of all states require that State Senators shall be elected by districts. In nineteen states it is specifically required that but one Senator shall be elected in each district.

[Mass., Mich., Minn., N. H., N. J., N. C., N. D., Ohio, Ore., Penn., R. I., S. C., S. D., Ver., Tex., Wis.]

Seven states require members of the lower house to be elected by single districts.

[Cal., Kan., Ken., M. D., Mich., N. Y., Wis.]

Thirty constitutions guarantee at least one representative to each county or town, but permit general tickets where more than one is to be elected to a district. Seven states have no constitutional provisions which would interfere with proportional representation in the election of Representatives.

[Del., La., Ill., Ind., Minn., Nev., Wash.]

In all other states constitutional amendments to permit multiple districts would be necessary. (Michigan 1890.)²

 $^{^1\,\}mathrm{Based}$ largely on ''Proportional Representation," by Prof. J. R. Commons, see p. 265 of that work.

² See Maynard v. Board of Canvassers (1800), 84 Mich. 228,

Limited and Cumulative Voting

Five constitutions require that every elector shall be entitled to vote for all the officers which may be elective by all the people.

[Minn., Mont., N. J., Nev., N. Y.]

Others provide constitutional guarantees which have been interpreted adverse to proportional representation:

Cumulative voting has been held to be unconstitutional under provisions granting citizens the right to vote at all elections, on the ground that the clause implies such citizen shall have but one vote.

[Maynard v. Board of Canvassers (1890), 84 Mich. 228.]

The reverse of this decision is found in People v. Nelson (1890) 133 Ill. 565.

Limited vote has been held to be in violation of the provision that citizens shall be entitled to vote at all elections.

[State v. Bedell, 53 Atl. 198 (N. J. 1902); State v. Wrightson, 56 N. J. L. 126; State v. Constantine (1884), 42 Ohio St. 437; In re Opinion of Judges (R. I. 1898), 41 Atl. 1009.]

The opposite decision was given in Commonwealth v. Reeder, (Penn. 1895) 33 Atl. 67.

These provisions would not be violated by the Multiple Vote of the List System.

Plurality Elections

Nearly all State Constitutions contain a pluralityrule of elections, which would prevent the election of

PORTIONAL REPRESENTATION

candidate n a general ticket who had not received a plurality of the votes. This would leave room only for the simple cumulative vote. In twenty seven states, however, Constitutions do not apply this rule to the election of r

CONCLUSION

List System

This system will be found best adapted to use in the United States because of its great simplicity, its adaptibility to large constituencies, its direct recognition of the party system, and because it may be operated with the Australian ballot. It is further recommended, as set forth in the following, because it has been found to secure a fair and accurate distribution of seats to the various political parties, because it has been found to express fully the choice of the people as to the candidates to be elected within each party, and has been found fair as between the candidates. It is not only simple in its calculations involving simple operations and a single process, but is not varied by contingencies of the voting or counting. The results are easily subjected to review and recount.

Multiple Vote

This is to be preferred to single vote not only for legal reasons, but also because it gives greater opportunity for the expression of personal preferences. With the provision that the elector be allowed to distribute his votes among the candidates of all the lists, it will enable the voter to select especially desirable candidates of other tickets than his own, it will en-

able candidates to run effectively on independent tickets, and will open a way for effective work by third parties.

It should be provided that such votes as the elector does not desire to cast for candidates individually may be cast for the party ticket as a whole. In this way members of a party may express preference for candidates within their party, or for a favorite in another without the loss to their party of the whole vote. Poor candidates may be voted against by voting for the other candidates of the ticket.

Simple or Droop Quota will be found most successful, both on account of their greater simplicity, and on account of the fact that the d'Hondt quota in spite of its mathematical ingeniousness has not arrived at more accurate results.

Seats allotted to a party can not be more fairly distributed among the candidates of the party than according to their personal votes. The method of voting above described offers an incentive to the casting of individual votes, but in case of a dirth of such, there would be no objections to distributing the places by order on the ticket, or by lot.

The voting is accomplished by the elector by putting a cross before such candidates as he chooses to vote for, and by putting a cross before the name of the party to which he desires the remaining votes to be accredited.

The counting of the vote is accomplished by accrediting to each party as many votes as are cast for its candidates plus those cast as party votes. Laws embodying the above scheme in whole or in part are found in the Swiss Cantons, where it has given most satisfactory results.

Proportional Representation in this form will not only secure the representation of minorities but will also enable third parties to accomplish results without having first to become a majority party, so that votes cast for such will not "be as good as thrown away."

In districts where one party has had so large a majority that many voters of all parties saw no need of voting, it will create an active interest in politics and result in the polling of a larger vote. It will enable reforms to be brought about within parties without the defeat of the party. It will open the way for "represeentation of interests" without the necessity of constitutional changes, and will leave the question of such representation with the people for settlement. Above all it will secure true and effective representation of both majority and minority of the population. [For a draft of a law following these lines see that recommended by a committee of the American Proportional Representation League appointed at Saratoga in 1895 (Commons, "Proportional Representation" p. 119)]





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JUVENILE COURTS

STANLEY K. HORNBECK

MADISON WISCONSIN



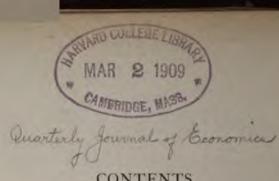
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JUVENILE COURTS

STANLEY K. HORNBECK

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CONTENTS

	Page
REFERENCES	3
PRINCIPLES	5
HISTORY	6
Evolution of Juvenile Court Principles in Legisla-	
tion	6
Development in the United States	8
LEGISLATION	12
Foreign	12
United States	19
Analysis of Statutes	19
Laws by States	24
JUDICIAL DECISIONS (UNITED STATES)	30
Constitutionality of Statutes	30
Decisions which Affect Various Principles Em-	
bodied in Juvenile Court Legislation or Admin-	
istration	34
ESSENTIALS OF A GOOD LAW	38

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PRINCIPLES 1

A number of fundamental principles underlie juvenile court legislation and the decisions of the courts upon which juvenile court and probation systems now (1) Children should not be considered as criminals but as victims of circumstance. Distinction must be made between neglected, dependent, and wayward children and delinquents and incorrigibles. (2) Children should not be thrown into association before, during, or after trial, with criminals or adults under accusation. (3) All the resources of the community should be used by the court to promote the welfare of the child and to protect him. (4) Children should be tried by special courts in special rooms with the least possible publicity or display of legal machinery, and the whole process dissociated from criminal procedure. The judges should, as far as possible, be "child experts." (5) Probation officers, competent, in adequate number, and paid, should be at the disposal of the court. (6) Parents, guardians, etc., are in many cases to be held responsible for the offense of the child.

¹See Lindsey: Juvenile Court Laws of Colorado. Berenger: op. cit., p. 1-60.

Hahn: op. cit. Barrows: In International Prison Commission Report. 1904. p. XI ff.

HISTORY

Evolution of Juvenile Court Principles in Legislation

The juvenile court, under that name, is of recent growth, but the principles which underlie it are to be found far back in English Law in the right and duty of the state as parens patriae-.1 Turning to modern legislation we find in the law of 1840 (3 and 4 Vic. c. 90), "For the Care and Education of Infants who may be convicted of Felony," provision that the High Court of Chancery may, upon application, place any persons under 21 years of age who may be convicted of felony in care of persons or associations that agree to teach and train them during minority. Laws, 1866 (29 and 30 Vic. c. 118) and 1894 (57 and 58 Vic. c. 33 provide that morally imperiled children may be sent by the court to certified industrial schools, or lodged at home or with a respectable person and there be trained, clothed, and fed. The Law of 1847 (10 and 11 Vic. c. 82) provides for summary conviction of children not over fourteen, and allows the justices to excuse convicted offenders from punishment at their discretion.

New South Wales in 1857 (20 Vic. no. 19) and 1864

Compare Blackstone III, #426-428.

(27 Vic. no. 16) passed laws for state protection of destitute children up to the age of nineteen, with contribution by the parents. The English "Industrial Schools Act," of 1866, (29 and 30 Vic. c. 118), contains several of the principles, especially the definition of neglected and dependent children (sec. 14), and provisions for the relation between parent and court, which are prominent in almost every modern Juvenile Court Act. The English "Summary Jurisdiction Act" of 1879 (42 and 43 Vic. c. 49), and its amending Act, 1899 (62 and 63 Vic. c. 22), provide for summary jurisdiction when the right of trial by jury is waived by the parent or the juvenile offender (age 12 to 16).

The principle of probation is recognized in the "Probation Act" of Queensland, 1886 (50 Vic. no. 14). The English "Probation of First Offender's Act" of 1887 (50 and 51 Vic. c. 25) gives the court the power to release upon probation instead of sentencing to punishment.

In 1890 New Zealand adopted a "Children's Protection Act" (1890 no. 21), whereby punishment is prescribed for ill treatment, neglect, abandonment, or exposure of children; and restrictions are placed on employment of children, the court in both cases being given discretionary powers and being allowed to place the child in a suitable home or institution, and to compel the parents to contribute to the support; while provision is also made for appeal from decisions of the court. In 1896 Queensland passed a "Children's Pro-

¹ Compare also New Zealand Act. 1882, no. 15.

tection Act" (60 Vic. 26) similar to the New Zealand Act. In 1899 an English Act (62 and 63 Vic. c. 22) gave summary jurisdiction over "all offenses of young persons other than homicide."

In 1901 the English "Youthful Offender's Act" (64 Vic.—I Ed. VII, c. 20) removed disqualifications attaching to conviction of felony of a child or young person; emphasized parent liability; and gave the court the power to remand or commit, pending trial, to some place other than a prison. In 1902 New South Wales passed an act (1902, no. 47) for "Protection of Children." In 1906 Victoria passed a "Children's Court Act" (1906, no. 2058) which is a model of completeness. New legislation is at present pending in England. (Cf. infra. p. 14).

Development in the United States

The most rapid, tangible, and systematic development of the principles has been in the United States. In 1863 Massachusetts passed a law separating children in court from adults charged with offense. In 1877 New York passed a similar and more concise law, which provides that no child under sixteen "shall be placed in any prison or place of confinement . . . or in any vehicle in company with adults charged or convicted with crime, except in the presence of proper officers." Michigan, in 1873, established a State Agency for the Care of Juvenile Offenders, which has performed functions similar to those of probation officers. Massachusetts passed Probation Laws in 1878 and 1880. In 1891 Massachusetts summarized a number

of statutory provisions concerning the treatment of children, which had been enacted in her previous legislation, (May 28, 1891, c. 356). New York, in 1892, added a new section to the Penal Code allowing separate trial, special docket, and separate record for cases of children under sixteen. It has been affirmed that the basis of the Juvenile Court Law is the Board of Guardians Law, passed by the Indiana Legislature, March 9, 1891, (c. 151) and amend. March 3, 1893, (c. 122.)

The Colorado School Law, April 12, 1899, c. 136, provided special treatment for "juvenile disorderly persons," and contained many of the principles which have been embodied in subsequent juvenile court laws. The law which really created the juvenile court was that passed by the Illinois Legislature, April 21, 1899, p. 131. Its provisions have constituted the frame work of many of the laws passed in other states.

Since 1899, the growth and development of the juvenile court system has been rapid and extensive. Many states had previously passed probation laws, and it is noticeable that the probation system has usually preceded the juvenile court.² In 1899, Michigan and Rhode Island passed "Juvenile Probation" laws. In 1901, Illinois, Kansas, Michigan, Missouri, and Wisconsin passed juvenile court or juvenile probation laws, or both. In 1902, Ohio and New York passed laws concerning children's courts. In 1903,

¹ Cf.: History of the Illinois Juvenile Court Law, T. D. Hurley, Juvenile Court Record, May, 1907, p. 6 ff.

²Cf: Statutes, compiled by New Century Club, Philadelphia, 1900.

no less than nine states legislated on these subjects. In that year Colorado passed the original "Adult Delinguency" Law. In 1904, five states; and in 1905. no less than twenty, legislated on these three subjects. -in most cases on all three. In 1906, four states enacted new, or revised old, statutes affecting juvenile courts. In 1907, no less than eighteen states, enacted new statutes or added to or revised old statutes. By the end of 1907, thirty-two states and the District of Columbia had probation laws, and twenty-seven and the District of Columbia had juvenile court laws. Few states have been satisfied with their original laws. Some changes have been necessary on account of decisions of the courts; some have been made for the purpose of simplicity; but most of them represent extensions which have been found practicable as the work of the court has expanded and its value has been appreciated. The Alabama, Colorado, District of Columbia, Illinois, Iowa, Michigan, Massachusetts, Oregon, and Utah laws furnish an especially interesting field for study. The Michigan law of 1907 is very carefully drawn. The Colorado law of 1907 is representative of the most advanced juvenile court legislation. The latest, and a very complete, law is that passed in Ohio in April, 1908.

After the legislative development, and largely influencing it, the detailed study of the juvenile court system is to be sought in the development of city courts under the provisions of the state statutes. Especially interesting are those of Boston, Buffalo, Chi-

cago, Denver, Indianapolis, Milwaukee, Minneapolis, New York, Rochester, and San Francisco.

The scientific development of the system in the United States has caused wide study, both interstate and by commissions from abroad, especially from England, France, Germany, and Sweden. The Howard Association of London, M. Ed. Julhiet from France, Dr. J. M. Baernreither from Germany, and Judge Harald Salomon from Sweden have within the last four years made special studies of the American System with a view to bettering Juvenile Legislation. Their countries and others are passing laws which embody in concrete form many of the features which characterize the American Juvenile Court.

LEGISLATION

Foreign Countries

England.1 The English tribunals are well prepared to deal with children under twelve, and with youthful offenders under sixteen, because of the wide discretionary powers which the English criminal law, as reformed during the nineteenth century, confers upon judges and magistrates.2 Control of the court over persons as juveniles ceases at the age of sixteen." The English statutes provide for summary judgment where jury is not especially demanded by parent or guardian or by the "child or the youthful offender." Justices may excuse convicted offender from punishment where expedient.6 Dependent or neglected children, under fourteen, found begging, wandering, homeless, without proper guardian or visible means of support, associating with criminals, etc., may be brought by any one before two justices or a magistrate and may be sent to a certified industrial school or to a home with responsible parents, due regard being given to the re-

¹For account of English Juvenile Court, see Seeking and Saving, Oct., 1906. Cf. Bérenger, op. cit. and Russell and Rigby, op. cit.

W. D. Morrison, op. cit., p. 187.

^{*} Statutes 1866 (29 and 30 Vic. 118) and 1901 (64 Vic. and I Ed. VII, c. 20).

^{4 1879 (42} and 43 Vic. c. 49, sec. 10-11).

^{* 1847 (10} and 11 Vic. c. 82).

ligious persuasion of the child, and to the requests and rights of the parents.¹ Parents may be forced to contribute to the child's maintenance.²

Parents or guardian may be summoned as contributing to the offense of the child, or for neglect, and may be tried with the child and may be fined and ordered to pay security for its good behavior and may be made to pay toward its support if committed to a state institution or home. The court may release the offender on probation or for good conduct.³ A separate register for convicted youthful offenders shall be kept.⁴ Appeal may be made to the High Court of Justice.⁵ The child committed may be discharged by the Secretary of State.⁶ Most of these principles apply to Ireland and Scotland as well.

England is establishing short Detention Schools on the model of Truant Schools. The English system especially emphasises the co-operation of the courts with the educational authorities and insists upon parental responsibility.

The juvenile court idea has progressed rapidly in the English cities. One of the most successful has been that instituted at Birmingham, April 13, 1905. The working of this court resulted in the issuing of a government circular which pointed out the necessity

^{1 1866 (29} and 30 Vic. c. 118).

^{* 1901 (64} Vic. and I Ed. VII, c. 20, sec. 4).

^{1 1887 (50} and 51 Vic. c. 25).

^{*1901 (64} Vic. and I Ed. VII, c. 20, sec. 13).

^{* 1879 (42} and 43 Vic. c. 49, sec. 33).

^{* 1866 (29} and 30 Vic. c. 118, sec. 14).

It is claimed that Dublin first adopted the American idea.

of creating such courts generally; and many cities have followed the example of Birmingham.¹

The London County Council prepared a reform based upon the principles of (1) special magistrates for children, (2) special courts, (3) special detention homes, (4) nomination of probation officers.² Especially noticeable among the courts of the United Kingdom are those of Bury, Bolton, Manchester, Birmingham, Liverpool, Nottingham, Tunbridge-Wells, Swansea, Stockton, Hull, Coventry, York, Southport, Beverly, Scarborough, Greenock, Glasgow, Dundee, Dublin, and Cork.

In Scotland, special arrangements have been introduced for the treatment of juvenile offenders at Glasgow and Greenock: (1) Trial does not take place at ordinary sittings of the courts; (2) children under sixteen may not be confined in ordinary police cells; (3) probation officers are in daily attendance.

At present (July 1908) a "Bill to Consolidate and Amend Laws Relating to Children and Young Persons" is pending in the British Parliament. This bill, introduced Feb. 10, 1908, provides for separation of juvenile offenders from adult criminals; special treatment; separate courts; separate detention; parent responsibility; entire abolishing of imprisonment for children, and of penal servitude for young persons.

The bill has been favorably received by the country.

¹ See London Times, May 31, 1906.

² Compare Bérenger, op. cit. p. 9, note 2.

Canada. The Canadian Statute, R. S. 1906, c. 146, sec. 644, (57-58 Vic. c. 29) provides for trial of persons under sixteen without publicity, apart, and at suitable times, and for separation from other offenders.

Manitoba. Children's Probation Act, R. S., 1902, c. 22, (61 Vic. 1899, c. 651) provides for the care of neglected children by a salaried superintendent; for their examination by a judge; for placing them in industrial schools and schools of refuge under state authority until the age of twenty-one; for payment by municipalities for the maintenance of certain neglected children; for separate detention; for attempt to secure foster homes; and for penalty for ill treatment.

Ontario. The Ontario Children's Protection Act (R. S. Ontario 1897, c. 259) contains extensive provisions, which, although not as complete, are very suggestive of the Victoria act of 1906, cited infra.

New Zealand. The Justices of the Peace Act, 1882, no. 15 (sec. 176), provides for summary trial unless objected to by parent or guardian, of children under twelve, and (sec. 177), with consent, of young persons (between ages of twelve and sixteen). The Children's Protection Act, 1890, no. 21, provides especially for jurisdiction over all ill-treated, neglected, dependent, or exposed children.

Victoria. Children's Court Act, 1906, no. 2058, provides a "children's court," to have jurisdiction over children under seventeen; gives wide definition of "parents" and "juvenile offenders;" specifies that children's court shall be held at every place within

the state, where a court of petty sessions is appointed to be held; that the governor may appoint, for any locality, any person or police magistrate, or any one or more justices of the peace within the place, to exercise jurisdiction of the children's court; and that the governor may appoint probation officers of either sex who shall be subject to orders of the court; specifies the duties of probation officer; gives the juvenile court exclusive jurisdiction over all charges against children for felonies and misdemeanors, and allows it to hear and determine all information for offenses against any act punishable on summary conviction; provides for exclusion of persons unnecessary to trial, for an independent register, trial within twenty-four hours of apprehension, detention where possible in one of the "special receiving depots;" and provides for giving bail. The parent may be convicted of delinquency and may be compelled to contribute toward support. This law leaves a very wide discretion with the judge. "The court shall be guided by the real justice of the case without regard to legal forms and solemnities, and shall direct itself by the best evidence it can procure." The Governor in Council is also given wide powers for arranging for detention homes, forms of procedure, appointment of probation officer, and "prescribing in all matters necessary for carrying out this act."1

France. The law of June 5, 1850, provides for a separation of adults from juveniles in both prison

For other British Colonies see supra under "History."

and court,¹ and for education (industrial) of all minors imprisoned. Paris police stations have separate waiting rooms and there is a separate "remand house" for temporary detention after judgment. Children may not ride in patrol wagons nor be escorted by "gardes" in uniform.²

The Committee of the Patronage de l'Enfance provides for legal defense of children brought before criminal courts.³

Laws, April 19, 1898, and April 12, 1906, leave considerable discretionary power with the judges in dealing with juvenile cases. The probation system is being tried under the care of the Patronage de l' Enfance. An active committee is working for the perfecting of a juvenile court system.

Germany. The Law of July 2, 1900, for the Fürsorgeerziehung Minderjähriger (Guardianship of Minors)—an extension of the Law of March 13, 1878,—includes a court of guardianship and provides elaborately for probation. Any one may bring a neglected or offending child under eighteen to this court and such child may be removed entirely from parental care and into a state institution, or into a family, under care of a probation officer. Even offenders over eighteen may be sent to reformatories. The relation of the probation officer to his charge is more intimate than under the American system, for

¹ Russell and Rigby, op. cit. p. 239.

² Russell and Rigby, op. cit. p. 171-2.

Morrison, op. cit. p. 183.

⁴ Russell and Rigby , op. cit. p. 250-64.

the Fürsorger has, as a rule, but one protegé. Such protection may continue until the child reaches the age of twenty-one. Detailed reports and records are required.¹

Holland. Holland has special statutes providing for substituting state guardianship and maintenance for parental control; providing for reprimand and conditional condemnation before sentencing delinquents to reformatory; and private court proceedings. The age of juvenile jurisdiction has been raised to eighteen.²

Hungary. Children between twelve and sixteen cannot be punished. They may be confined in houses of correction to which also may be admitted minors and destitue children not over eighteen. Special care ceases at the age of twenty. Hungary has especially developed its system of homes for dependent and neglected children.³

Sweden. Children under fifteen are not brought before the ordinary courts, but before a commission whose chairman is a clergyman, the other members being school teachers, legal men, etc. Certain men do work approximating that of the probation officer, being paid for each special case.

¹ Russell and Rigby, op. cit. p. 141-142.

²¹b., 279-286.

⁵ ib., 30.

United States

ANALYSIS OF STATUTES

Purpose. An excellent enunciation of the principles underlying juvenile court legislation appears in the following, the preamble to the Louisiana Law of 1906 (c. 82, p. 134): "Whereas the welfare of the State demands that children should be guarded from association and contact with crime and criminals and the ordinary process of the criminal law does not provide such treatment and care and moral encouragement as are essential to all children in the formative period of life, but endangers the whole future of the child; and,

"Whereas, experience has shown that children lacking proper parental care or guardianship, are led into courses of life which may render them liable to the pains and penalties of the criminal law of the State, although the real interests of such child or children require that they be not incarcerated in penitentiaries and jails as members of the criminal class, but be subjected to a wise care, treatment, and control, that their evil tendencies may be checked and their better instincts may be strengthened; and,

"Whereas, to that end it is important that the powers of the courts, in respect to the care, treatment and control over dependent, neglected, delinquent, and incorrigible children should be clearly distinguished from the powers exercised in the administration of the criminal law:

"Be it enacted"

Title. Certain statutes have been declared by the courts to have insufficient and inadequate titles.

For good examples of Titles, see California, 1905, c. 640; Colorado, 1907, c. 149; Michigan, 1907, no. 325; Oregon, 1907, c. 34; and Utah, 1907, c. 139.

Definitions. Most statutes provide for three classes of children—dependent, neglected, and delinquent.

Especially good definitions of these are found in Colorado, 1903, c. 85 and 1907, c. 168; Illinois, 1905, May 16, p. 152; Ohio, 1908, Apr. 24, secs. 5, 6; Oregon, 1907, c. 34, sec. 1; Utah, 1903, c. 124, sec. 2, and 1907, c. 139, sec. 13; Arizona, 1907, c. 78, sec. 1. Louisiana, 1906, c. 82, sec. 1, mentions also "incorrigibles". Massachusetts, 1906, c. 413, sec. 1, includes "wayward children.".

Courts. Statutes provide that jurisdiction in juvenile cases shall lie as follows: Arizona, Iowa, Minnesota, Montana, Nebraska-District Courts; Illinois-Circuit and County Courts; Missouri-Circuit Court: Louisiana and Texas-District and County Courts: Michigan-Circuit and Probate Courts: Kansas and Oregon-County Court; New Jersey-Court of Common Pleas: Idaho and Kansas-Probate Court: Wisconsin-Courts of Record in the several Counties; Washington-Superior Courts in Special Session; New York-Court of Special Sessions; Pennsylvania-Ouarter Sessions of the Peace: California-Superior Court or Justices Court or Police Court in Special Sessions: Ohio-Courts of Common Pleas, Probate Courts, Insolvency Courts and Superior Courts: New Hampshire-Police Court and Justices Courts; Alabama-Chancery Court or any Court having equal powers and jurisdiction; Colorado, District

¹ Cf. Report of the Probation Commission of New York, p. 225.

of Columbia, Indiana, Maryland, Utah-special Juvenile Courts.

Age limits. The tendency in recent legislation has been to raise the limit of age under which cases shall be subject, in the first instance, to juvenile jurisdiction. Present statutes set the limit as follows: Alabama—fourteen; Arizona, California, Colorado, Idaho, Kansas, Louisiana. Maryland, Missouri, Montana, New Jersey, New York, Pennsylvania, Rhode Island, Tennessee, Texas, Wisconsin—sixteen; District of Columbia, Michigan, New Hampshire, Ohio, Washington—seventeen; Indiana—males sixteen, females seventeen; Illinois and Kentucky—males seventeen, females eighteen; Nebraska (1907), Oregon (1907), and Utah (1907)—eighteen. In many cases the jurisdiction of the court continues to twenty-one.

Trial. Most of the statutes allow summary jurisdiction except where the plea "not guilty" or demand for trial by jury is made.² In general the effort is made to have a juvenile court room separate from any other court room. In several cities the court has a separate building with both court and detention facilities. Where a special room is impossible most statutes provide that the juvenile court shall not be held within two hours of the holding of any other court in the same room. Sessions shall be made as private as possible, only persons necessary to the trial or to the interests of the child being admitted. Some courts

¹ See e. g., Statutes of Colorado, Illinois, Ohio, Kansas and Tennessee.

² See e. g., statutes of Arizona, 1907, c. 78, sec. 3; Michigan, 1907, c. 314, sec. 3; Texas, 1907, c. 44, sec. 2.

are in session daily; others, one, two, or more, days per week.

Appeal.1 The right of appeal is as a rule expressly provided for. Some statutes however omit this provision.

Probation officers. The principle of probation has been even more widely accepted than that of juvenile courts. Probation officers are appointed as follows: By the Court-in Alabama, Arizona, District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Washington, Wisconsin; by the Court, subject to the approval of the State Board of Charities-in Colorado; by a probation Commission, on approval of the court-in California. The Governor in Michigan appoints "County Agents" who act under the supervision of the State Board of Corrections and Charities. The State Board of Corrections and Charities appoints in Rhode Island. Wisconsin has a special procedure.2

Provision for the compensation of probation officers is made in the statutes of Alabama, Colorado, District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Mis-

Compare Colorado, 1907, c. 149, sec, 15; Indiana, 1907, c. 136, sec, 1;
 Utah, 1907, c. 139, sec, 7; Wisconsin Sess. Laws, 1907, sec, 573-6, sub, sec.
 Kansas, 1905, c. 190, sec, 12. For judicial decisions, see p. 30ff.

² See Sess. Laws, 1907, Sec. 573-2, sub-sec. 4.

souri, New Hampshire, New Jersey, New York, Ohio, Utah, Wisconsin.¹

Procedure. The rules laid down in different statutes vary widely.² Generally, however, they follow somewhat the line indicated in the Colorado Statutes. In some cases a complaint and information by the prosecuting attorney is required for cases of delinquency.³ In most States emphasis is laid on the fact that the procedure is not a trial.⁴

Disposition of Children. In cases of dependent and neglected children, the laws allow the judge to use wide discretion in leaving children with parents or guardians—one or the other, or both, being on probation—or placing them with families or in private or public institutions.⁵

Parent Contribution. Most states allow the judge when placing the child in an institution or home, to assess the parent of the child a reasonable sum (usually with a maximum prescribed) monthly, for its support.⁶

Adult Delinquency or Responsibility. Parents, etc. whom the judge considers responsible for the condition or action of the child may be fined in sums ranging from \$100 to \$1,000, or imprisonment from six

Also compare Tables in Helen Page Bates' Digest, Charities, 1904-5, vol. 13, p. 329-39.

²Compare Michigan, 1907, no. 125, secs. 5-8; and Texas, 1907, no. 45, secs. 4, 5, 9.

³Compare U. S. Statutes (D. C.) 1907, c, 960, secs, 12-23

⁴ Compare Michigan, 1907, c. 325, sec. 2.

⁴ Compare Michigan, 1907, c. 325, sec. 7; Texas, 1907, c. 45, sec. 7; Ohlo, 1908, Apr. 24, secs. 12-13.

^{*}Compare Arizona, 1907, c, 78, sec. 5; Kentucky, 1906, c, 64, sec. 9; Michigan, 1907, no. 325, sec. 9; Washington, 1907, c, 110, sec. 15.

months to one year, or both. The following states have special provisions: Alabama, Colorado, District of Columbia, Idaho, Illinois, Kansas, Kentucky, Massachusetts, Michigan, Nevada, Montana, Nebraska, New Jersey, New York, Ohio and Oregon.¹

Detention Homes. Many states have authorized or ordered the building of special detention homes where children may be kept both while awaiting and after trial, also for short periods of confinement.

Religious Faith and Family Care. As a rule there is added to the provisions for disposing of cases of neglected and dependent children where placed in private homes or institutions, that attention be given to the religion of the parents, or of the child.²

Educational Clauses. Some states especially include in juvenile court law provisions for the education of the child.^a

LAWS BY STATES

Fourteen States have no juvenile court or probation laws. Of these, several have institutions which approximate juvenile court work. Many of the statutes of others have been cited above. It will be sufficient here, avoiding repetition, to mention certain features of various statutes and to quote extensively from the statutes of one or two states.

¹ Compare Colorado, 1903, c, 94, sec. 1; and 1905, c. 81; District of Columbia, U. S. Stat. 1906, c, 960, sec. 24; Hilmois, 1905, May 13, p. 180; Indiana, 1905, c, 145, and 1907, c, 199; Minnesota, 1907, c, 92; Michigan, 1907, no. 314; Ohio, 1908, April 24, secs. 11, 14-19.

² Compare Arizona, 1907, c. 78, sec. 10; California, 1905, c. 610, sec. 20; Colorado, 1907, c. 168, sec. 8; Iowa, 1904, c. 11, sec. 15.

³ Compare Idaho, 1905, Mar. 2, p. 106, sec. 9; Illinois, 1907, Apr. 19, p. 69, sec. 8.

Alabama. 1907, no. 340, Mar. 12. "Trial shall be so conducted as to disarm the child's fears and win its respect and confidence, (sec. 15). A penalty is provided for interfering with or opposing the work of the probation officer or making false statement concerning that which he has the right to know.

Arizona. 1907, c. 78, is a brief, clearly written statute, without cumbersome phraseology, and establishing a simple system.

California. Good laws, as amended, 1905, c. 579 and c. 610.

Colorado. 1907, c. 149, contains a complete title—
"An act establishing juvenile court in each county, and in each municipality known and designated as a city or county, within this state, in which there are one hundred thousand or more inhabitants, and to prescribe the jurisdiction, powers, rights, proceedings and practice of such courts, and to define the rights, powers, duties, and qualifications of the judges and other officers connected therewith, and to provide for the maintenance thereof.

The Colorado statutes, collectively, provide that the juvenile court shall have original jurisdiction in all criminal cases in which the disposition of any child or minor or other person under the acts concerning dependent, neglected, or delinquent children is in question; it shall be a court of record with the powers and manner of procedure of other courts of record;

i"Judge Lindsey's ambition to create a juvenile court in this city [Denver], which will be the model for the world, has long been known, and it is believed that his opportunity has arrived." Juvenile Court Record, May, 1907, p. 4.

shall sit for three terms per year; the judge shall be elected and shall have a salary of \$4,000 per annum, and shall receive no other salary, neither shall he act as attorney or counsellor at law; the judge shall appoint all officers of the court and fix their salaries; there shall be probation officers in counties of more than 100,000, not more than three of whom shall be under the public pay; and there shall be as many assistants as the judge and county commissioners shall think necessary; the chief probation officers to receive \$1,500 per annum, and two others \$1,200; appointments made by the judge shall be approved by the State Board of Charities and Corrections; in all counties with a population exceeding 15,000 there shall be not less than one probation officer, who shall receive a salary fixed by the board of county commissioners; paid probation officers are vested with the powers of sheriff; the county commissioner shall provide the sum necessary for the maintenance of the court officers and the detention home, and shall provide court room and supplies; trial by jury may be demanded by the parties entitled to it: the right of appeal shall be the same as in civil cases; the child may have the right of bond; no child under fourteen shall be placed in jail; and counties of the first class shall provide, at the public expense, a detention room or house, separate from the jail.1

Connecticut has Probation Officers (1905, c. 142).

¹ For the Colorado Laws (except 1907 Law) see Lindsey: Juvenile Court Law of Colorado, p. 18-50. On the 1907 law, see Charities, 1907, April 13, p. 71-72.

District of Columbia. U. S. Stat. 1885, c. 58, Act for the Protection of Children; U. S. Stat. 1892, c. 250, Act to Provide for the Care of Dependent Children in the District of Columbia and to Create a Board of Guardians; and U. S. Stat. 1901, c. 847, provide for probation officers, adult delinquency, contribution by the parent, and suspended sentence and bond. U. S. Stat. 1906, c. 960, creates a Juvenile Court in and for the District of Columbia; provides for probation officers, prosecution on information by the corporation counsel or his assistant; and is especially good on procedure (secs. 17-23).

Idaho. A feature common in the working of the system in several states, but especially provided for by statute appears in Idaho, 1907, Mar. 12, p. 231, sec. 3, providing that the probate judge and the school superintendent shall work in conjunction.

Illinois. The Illinois statutes contain a full statement of the powers of the judge, procedure, disposal of the child, and the duties of the probation officers.

(See especially 1905, p. 152, p. 189, and 1907, p. 69, p. 70.)

Indiana. A complete adult delinquency law, 1905, c. 145, and 1907, c. 169.

Iowa. The Law of 1907, c. 7, sec. 3, provides for the levying of a special tax for the support of a detention home and probation officers.

Kentucky and Louisiana passed comprehensive and well worded Juvenile Court Laws in 1906.

Kansas. The Law of 1901, c. 106, combines the action of the Humane Society with the work of probation officers.

Maine has a Probation Law.

Maryland has Juvenile Court Laws for the city of Baltimore,

Massachusetts. Massachusetts' legislation forms an epitome of the development of juvenile courts.

Michigan. The law of 1907, no. 325, is especially well worth study. It was carefully drawn, avoiding the features which caused the 1905 law to be declared unconstitutional.¹

Minnesota and Missouri have good laws on both Juvenile Courts and Probation.

Montana. 1907, c. 92, a complete law, well stated, contemplates placing children in state homes.

Nebraska. The 1907 legislation (c, 45 & 46) is especially good.

New Hamshire. 1907, c. 125, sec. 3: "It shall be unlawful for any newspaper to publish any of the proceedings of any juvenile court."

New Jersey has both Probation and Juvenile Court Laws.

New York. Has good laws on both Probation and Juvenile Courts.

See legislation recommended by the New York Probation Commission Report, 1905 (not passed).

Ohio. 1908, Apr. 24, contains an especially wide and complete definition of delinquent, and of dependent and neglected children. A carefully drawn law.

Oklahoma has special legislation concerning juvenile offenders.

^{1&}quot;This statute is already being found fault with, however, as providing no method for caring for any child between the age of seven and twelve having pronounced criminal tendencies," Judge Ronhert, quoted in Charities, November 16, 1907, p. 1071.

Oregon. 1907, c. 34. Complete, concise, well arranged.

Pennsylvania has both Juvenile Court and Probation Laws.

Rhode Island has a Juvenile Probation System.

Tennessee has Juvenile Courts and Juvenile Probation.

Texas. 1907, c. 44-45, good on hearing, procedure, and disposal of the child.

Utah. 1907, c. 139, a comprehensive title; good on compensation, power and extent of jurisdiction of the court and selection of the judge; provides for a Juvenile Court Commission consisting of the Governor, Attorney General and State Superintendent of Public Instruction. Contains (sec. 5) a statement of alternative decrees and judgments, and (sec. 11) the duties of the probation officers. Adds to the Ohio definitions. May be read profitably in connection with the decision of the Utah Supreme Court in 1907, Mill v. Brown, 31 Utah 473 (see infra. p. 32).

Vermont has county Probation Officers.

Washington. Washington legislation provides also for the jurisdiction of the judge of the Juvenile Court over the employment of child labor (1907, c. 128).

Wisconsin. Wisconsin Juvenile Court Laws provide a special method for the appointment and employment of probation officers. (Sess. Laws, 1907. Sec. 573-2, Sub-sec. 4.)1

¹Compare methods suggested by the New York Probation Commission Report, 1905, Appendix A, p. 101-106.

JUDICIAL DECISIONS

Constitutionality of Statutes

The constitutionality of statutes establishing juvenile courts as such, has been brought into question in the following cases:

Mansfield's Case. In Mansfield's Case, 22 Pa. Superior Court 224, (1903) the Pennsylvania Law of 1901, c. 185, (P. L. 279) establishing juvenile courts and the probation system, was declared unconstitutional. It was held that the legislature could not legislate the judge of an old court onto the bench of a new court which it was creating; that the title of the act was insufficient to allow the wide interpretation given it, that the act was special legislation inasmuch as it classified children and discriminated between classes; that requiring a child to make a formal affidavit in order to secure trial by jury violates the constitutional guarantee of that right. The legislature of Pennsylvania subsequently reenacted the statute as five separate Acts, changing some parts and leaving to the Juvenile Court and Probation Act, 1903, c. 205, (P. L. 274), such provisions only as have reference to the care, treatment, and control of dependent, neglected, incorrigible, and delinquent children under the age of sixteen years, and providing for the means by which special power may be exercised.¹

Ex parte Loving. In ex parte Loving, 178 Missouri 194, (Dec. 9, 1903) the Missouri Law, Mar. 23, 1903, p. 213, was held constitutional. It was held that the terms "neglected" and "delinquent" children do not refer to different subjects, but only to different classes, the title being "children"; that the limitation of the application of the law to counties having 150,000 or more population does not make it a special or local law; that it is within the competence of the legislature to make certain provisions for densely populated districts which it cannot for rural districts, and to make special provisions for children whose surroundings are disadvantageous, which it does not make for those under other conditions; that failure to provide for separation of neglected and delinquent children does not render the statute unconstitutional; that the provisions of such a statute render void such provisions of a city charter as conflict with them.

Commonwealth v. Fisher.² In Commonwealth v. Fisher, 213 Pa. State 48, 5 A. & E. Ann. Cas. 92, (Oct. 9, 1905), an appeal from the decisions of the Superior Court of Pa., the Pennsylvania Statute, 1903, c. 205, (P. L. 274), was declared valid. It was held that the title of the act is sufficient (not containing more than one subject); that the act does not create a new court; that the act does not deprive juveniles

¹ See Commonwealth v. Fisher, infra.

² See Mansfield's Case, supra.

charged with crime, of their constitutional right of trial by jury as the proceeding of the juvenile court is not a trial for offense such as requires a jury; that it is not class legislation, all children under sixteen being included in its operation; that the purpose of the act is not trial nor punishment, but to prevent trial and to prevent the necessity for punishment,¹

Hunt v. Wayne Circuit Judges. In Hunt v. Wayne Circuit Judges, 142 Michigan 93, 7 A. & E. Ann. Cas. 821, (Dec. 4, 1905), the Michigan Statute, 1905, no. 312, was declared unconstitutional. It was held that the act conferred powers on the circuit court commissioners of certain counties beyond their constitutional rights; that it failed in those counties, and consequently throughout the whole State, because it failed to establish a uniform method.²

Mill v. Brown.³ In Mill v. Brown, 31 Utah 473, 88 Pac. Rep. 609, (Jan. 17, 1907), the Utah Supreme Court declared the Utah Statute, 1905, c. 117, establishing the juvenile court and probation system, valid, with the exception of sec. 7. It was held that sec. 7, providing that the parent of a child adjudged a delinquent may be brought before the court, and, if found guilty of contributing to the delinquency, be condemned to certain penalties, was unconstitutional

¹ The opinion in this case contains an excellent review of opinions and cases bearing upon the principles involved in the juvenile court system. Compare 5 A. & E. Ann. Cas. 92 ff. and especially note on p. 96.

³ The opinions of five judges of the circuit court quoted in this case are interesting. On pages 155 of 142 Mich., and 829 of 7 A. & E. Ann. Cas. appears a bibliography of cases. See also 7 A. & E. Ann. Cas. p. 830, note.

^{*&}quot;The clearest and most lucid announcement of the law which has ever been written on that subject." Juvenile Court Record. May, 1907, p. 16.

as denying such parent the right of trial by jury as for any other crime; but that the statute is not otherwise affected by the invalidity of sec. 7, which was not connected with its principal provisions; that the question of the right of the judge to hold office cannot be considered, although the constitutionality of the statute on which his acts depend may be; that it is within the power of the legislature to create juvenile courts, conferring upon them jurisdiction and powers previously exercised by the District Court, (Utah Const., art. 8, sec. 1); that creating juvenile courts in cities of the first and second class is not special legislation; that the statute in question is not an amending act though it incidentally affects some older laws; that the creating of juvenile courts having for object the surrounding of the children with proper environment is not criminal law and violates no constitutional provisions because not providing for trial by jury, for arraignment and plea, for notice to parents, or because of the manner of the trial, or because of the child's being required to be a witness; that even though the express provisions of the statute do not require the court in removing the child from the custody of parents and placing it under other custody, to find in addition to delinquency of the child, parental incompetency or neglect, yet, there being no provisions to the contrary, the act will be constructed to require it in view of Utah R. S. 1898, sec. 82, which provides that the parent cannot be deprived of the custody of the child unless he is adjudged incompetent to have such custody.

Decisions which affect various principles embodied in juvenile court legislation or administration

The power of the legislature. As to the state guardianship of children generally, see Whalen v. Ohmstead, (Conn.) 15 L. R. A. 593, note, "State Guardianship of Children."

The State has the power to detain and educate minor offenders. Ex parte Nichols, 110 Cal. 651; Jarrard v. State, 116 Ind. 98.

On the duty of the state to protect dependent and unfortunate infants: McLean Co. v. Humphreys, 104 Ill. 378. "The duty of the legislature to determine by rules and definitions the class or classes requiring it and to impose state supervision, is no longer open to question." Hunt v. Wayne Circuit Judges. For bibliography of cases on this point, see 7 A. & E. Ann, Cas. 829.

On the constitutionality of the statutes providing for commitment of wayward children to institutions or to proper guardianship without jury trial, see 5 A. & E. Ann. Cas. 96, note.

The employment of private institutions for the care of the child is an appropriate means to performing the duties of the state, and is, therefore, constitutional. See Wis. Industrial School v. Clark County, 103 Wis. 651.

The statute authorizing the commitment to the State Industrial School of children who for want of proper parental care are growing up in mendicancy and crime, under sixteen, is valid, but is not valid as to children over that age who have not been duly convicted of crime. Scott v. Flowers, 61 Neb. 620, and 85 N. W. 857.

The court: character and extent of its jurisdiction. Chancery-power. The power conferred on the county court by this act is of the same character as the jurisdiction exercised by the court of chancery over infants, having its foundation in the jurisdiction of the crown as parens patriae to protect that which has no lawful protector. In re Ferrier, 103 Ill. 367; Dinson v. Drosta, Appellate Court of Indiana, Div. no. 2, Jan. 1907; 80 N. E. Rep. 32. Cf Cent. Dig., vol. 31, § 138.

The power conferred by statute on Circuit Courts to appoint guardians is merely declaratory of the chancery powers which they already possessed. See Board of Guardians v. Shutter, 139 Ind. 268; also People v. Mercein, 25 Wendell 64, 35 Am. Dec. 653; Richards v. Collins, 45 N. J. Eq. 283, 14 Am. Rep. 726; Industrial School v. Clark County, 103 Wis. 651.

All courts having power to issue writs of habeas corpus to hear and determine cases arising under them may control under certain circumstances the custody, education and management of minor children. Commonwealth v. Barney, 29 Leg. Int. 317. See also ex parte Nicholl, 110 Cal. 651; Roth v. House of Refuge, 31 Md. 329; ex parte Crouse, 4 Wharton (Pa.) 9.

Decrees of the juvenile court are not for punishment, but for reformation. Ex parte Nicholl; in re Ferrier; and Mill v. Brown. Jury Trial. "In by far the greater number of cases which have passed upon this question it has been held that a statute which authorizes the commitment, without jury trial to a reformatory, house of correction, or refuge, of children who are incorrigible or lack proper parental care, is constitutional." See 5 A. & E. Ann. Cas. 92, p. 96.

Appeal. It has in several instances been decided that in the absence of statutory provisions, there is no appeal from the judgment of the judge of the juvenile court. Dinson v. Drosta, Appellate Court Ind., Div. no. 2, Jan. 1907; 80 N. E. Rep. 32. See Elliot: Appellate Procedure, § 75.

Legal rights of the parent. In some cases it has been held that the parent has a right to notice of proceedings, and in others that the parent has no such right. See Cincinnati House of Refuge v. Ryan, 37 Ohio State 197; in re Kelly, 152 Mass. 432; In re Wares, 161 Mass. 70.

The child cannot be taken from the parent or guardian unless the parent or guardian is shown to be an unfit person to have the custody of the child, or has been convicted of neglect. Cf. Milwaukee Industrial School v. Supervisors, 40 Wis. 328; People ex rel McEntee v. Lynch, 223 Ill. 346; Mill v. Brown, 31 Utah 473.

Custody of the parents or guardian will not prevail if it imperils the personal safety, morals, or health of the child, and the court will scrutinize the conditions and circumstances in determining the disposition of the child. Cf. Richards v. Collins, 45 N. J. Eq. 283.

Custody and Disposition of the Child. See Cincinnati House of Refuge v. Ryan, 37 Ohio State, 197; Farnham v. Pierce, 141 Mass. 203; In re Wares, 161 Mass. 70; In re Kelley, 152 Mass. 433; In re Ferrier, 103 Ill. 367; 27 Cent. Dig. "Infants," secs. 13, 18, 19. Cf. supra; "Powers of the Legislature and the Court."

Reformatories etc.: Legal status of, and character of commitment to. The view taken in the majority of cases is that the institutions and reformatories to which children are committed are not prisons or penitentiaries, but schools—"where children who may be exposed by conditions of misfortune, or who may perversely expose themselves to immoral surroundings and influences, may be kept under reasonable restraint during their minority, not as punishment for crime, but for their moral and physical well being." 5 A. & E. Ann. Cas. 96, note. Cf. Olson v. Brown, 50 Minn. 353; McLean County v. Humphreys, 104 Ill. 378; In re Ferrier, 103 Ill. 367; Scott v. Flowers, 61 Neb. 620.

Habeas Corpus: Children taken from the custody of the parents, etc. See ex parte Crouse, 4 Wharton 9; Farnham v. Pierce, 141 Mass. 203, 55 Am. Rep. 452, note p. 456; ex parte Nicholl, 110 Cal. 651; People ex rel McEntee v. Lynch, 223 Ill. 346.

ESSENTIALS OF A GOOD JUVENILE COURT LAW¹

From the preceding pages it will be seen that twothirds of the states have already passed special juvenile court or probation laws, or both, and with few exceptions, laws concerning adult delinquincy. There exist in many of the other states statutes embodying some of the underlying principles of juvenile court legislation. Juvenile court laws as they exist to-day are the result of experiment, and, in those states which lead in juvenile court legislation, represent constant effort to profit by and embody the results of experience in new and improved legislation. It has apparently been found possible in some states to approximate the work of the juvenile court without special legislation, but as a rule separate laws uniting the features essential to the effective application of those principles, have greatly facilitated the work. Experience, both of the actual working and of the legality of juvenile court legislation has now been

Charities, 1905, p. 325. See recommendation of the New York Probation Commission, Re-

port, p. 93 ff., App. A.

¹ See Lindsey: The Juvenile Court Laws of Colorado, especially p. 8 ff. What is Necessary; and p. 59 ff. A Word as to the Preparation of Juvenile Laws for Other States.

See H. B. Hurd: Minimum Principles Which Should be Stood for,

sufficient to make it possible to suggest certain features upon which emphasis is to be laid.

In general, it may be said that the code should not be hard and fast. It should be elastic. "Where juvenile court law covers a whole state, a uniform system should be adopted for practicability." "Due regard should be had for the statutes already on the books." "The institutions and methods in vogue within the state in dealing with children and the relations of parent and child, parent and state, and state and child, should be carefully studied and new legislation adapted to local conditions and resources."

The title should be clear, comprehensive, and sufficient. It has been held advisable in several cases to enact laws in several different acts in order to avoid difficulties with title.

The definition of neglected, dependent, and especially of delinquent, children should be made broad, and the age limit for juvenile jurisdiction should be made as high as consistent with the general laws.

Jurisdiction should be given to courts with chancery power.¹ It is not necessary that new courts be established, though it has been found in some places the most satisfactory method. It is generally agreed that there should be one judge—rather than several

^{1 &}quot;We consider it a step backward to provide for a special court limited to children's cases only, unless it is given general unlimited criminal and chancery court jurisdiction in order that it may successfully handle all cases against or concerning adults where a child is involved." Lindsey, in International Prison Committee report, 1904, p. 64.

in rotation—who shall be (exclusively, if possible) a juvenile court judge.1

Provision should be made for separate room, if possible, in a special building devoted to the needs of the juvenile court. There should be a waiting room so that cases may be dealt with one at a time.

The trial should be private, informal, and conducted on the principle of "the saving, not the punishment or restraint of the child." Proceedings etc. must be left largely to be determined by local needs and conditions.².

To avoid constitutional difficulties, the statutes should provide for jury and counsel where demanded, and should provide for prosecution by the state's attorney where demanded.^a

Judge Williams, Justice Ohmstead, Miss Julia Lathrop, Judge Lindsey, and many other writers upon juvenile courts insist upon the detention home as one of the most important aids in the work of dealing with delinquent children.

The statutes should provide for paid probation officers having the power of sheriffs. It is generally agreed that probation officers should receive public compensation and that the paid probation system is more effective than the unpaid.* The choice of pro-

^{1&}quot;—not one who merely takes his turn after adult cases," "The constant rotation is destructive of real success." The judge should be "intimately acquainted with child nature and with various institutions and methods that may be employed to help the child."

Cf. Lindsey, in International Prison Report, 1904, p. 64.
 Cf. Lindsey, Juvenile Court Law of Colorado, p. 26.

⁴ S. J. Barrows, in International Prison Report, 1904, p. XII. cf. Mrs. D. Sheffield, in Legislation in Regard to Children, p. 35-6.

bation officers should be left to the Court,1 or the Court subject to the approval of special Commissions, Boards of Charities, Probation Commissions etc. Juvenile Court Commissions are gaining in favor.2 Examinations of the nature of civil service examinations for preliminary qualifications, have been tried in some states.3

The principle of adult ("contributory") delinquency is recognized in nearly all recent legislation.*

The judge should be given power to suspend sentences, that is, to put the responsible party upon probation.

A feature new to legislation, though not to practice, is that of forbidding all newspaper and other publicity to cases which come before the juvenile court.

Juvenile court workers are emphasizing the necessity for wise child labor laws, compulsory school laws, and general provision for the co-operation of the home, the school, and the employer, both preliminary and supplementary to juvenile court legislation.5

¹ Charities, 1905-6, vol. 15, p. 758.

^{2 &}quot;The most notable recommendation of this [the New York Probation] Commission—is that of unpaid municipal probation commissions for cities of the first and second class. These commissions are proposed to be under the supervision of the State Board of Charities.

Mrs. D. Sheffield, in Legislation in Regard to Children, p. 35–36.

³ S. J. Barrows, in International Prison Report, 1904, p. XII. Lindsey, Juvenile Court Law of Colorado, 1905, p. 8.

sey, Juvenile Court Law of Colorado, 1886, p. c.

4 "The most practicable and important new feature [of juvenile court legislation] is the enforcement of the legal responsibility upon the parents and the home for the moral and physical welfare of the child and the establishment of a practical and effectual system of probation in order to carry out these principles generally recognized in every state."

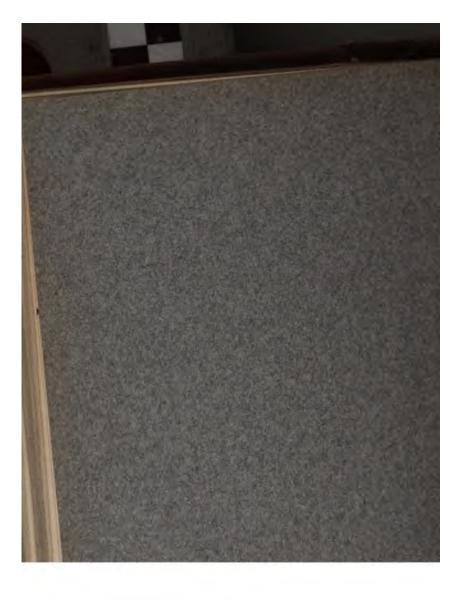
Lindsey, Juvenile Court Law of Colorado, p. 159.

See also Lindsey, in International Prison Report, 1904.p. 122-5, and Charities, 1904-5, vol. 13, p. 357.
For blank forms etc., in use by juvenile courts, see Juvenile Court Laws of Colorado, p. 65-80 and Bérenger, op. cit. p. 145-227.









WISCONSIN LIBERRY COMMISSION LEGISLAVIVE REFERENCE DEPARTMENT COMMERTIVE LEGISLATION BULLETIN NO 14



TELEPHONES INTERCHANGE OF SERVICE

LAURA SCOTT

DECEMBER 148



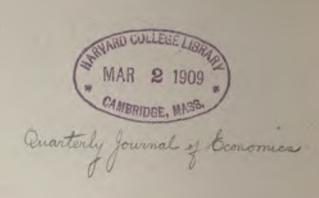
TELEPHONES

INTERCHANGE OF SERVICE

LAURA SCOTT

COMPARATIVE LEGISLATION BULLETIN—NO 16—AUGUST, 1908
Prepared with the co-operation of the Political Science
Department of the University of Wisconsin

WISCONSIN LIBRARY COMMISSION LEGISLATIVE REFERENCE DEP'T MADISON WIS



CONTENTS

REFERENCES	4
METHODS OF ENACTMENT	5
Constitutional	5
Legislative	5
HISTORY OF INTERCHANGE OF SERVICE	6
Foreign countries	6
United States	8
LAWS AND JUDICIAL DECISIONS	9
Foreign	9
United States	10
Transmission of messages	10
Physical connection	13
SALIENT FEATURES	18
Jurisdiction	18
People	18
Legislature	18
Compulsory interchange	19
Optional interchange	19
Application for interchange of service	19
Expense of connection	20

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METHODS OF ENACTMENT

Interchange of service between telephone companies has been required by constitutional and legislative enactments.

Constitutional

Many of the states allow or require interchange of service between telephone companies by provisions in the constitution.

Compare the constitutional provisions of Alabama, Const. 1901, sec. 239; Idaho, Const. 1888, art. 11, sec. 13; Kentucky, Const. 1891, sec. 199; Montana, Const. 1888, art. 25, sec. 14; Oklahoma, Const. 1907, art. 9, sec. 5; Washington, Const. 1888, art. 12, sec. 19.

Legislative

The legislature in some of the states and provinces requires interchange of service between telephone companies by direct enactment or by delegating the power to require such interchange to an administrative commission or board.

Compare the laws of Connecticut, Gen. St. 1902, sec. 3912; Indiana, Rev. St. 1901, sec. 5529; Louisiana, laws of 1904, p. 28; Maine, Rev. St. 1903, c. 55, sec. 12; Maryland, Code of public and general laws, 1904, art. 23, sec. 336; Missouri, Ann. St. 1906, sec. 1255; Montana, Civil Code, 1895, sec. 1001; New York, laws of 1890, c. 566, art. 8, sec. 103; Ohio, Bates Ann. Rev. St. 1787–1906, sec. 3462, sec. 3471; South Carolina, laws of 1904, p. 496; South Dakota, laws of 1907, c. 239; Texas, laws of 1907, p. 462–3; Vermont, St. 1894, sec. 4257; Virginia, laws of 1906, c. 310, sec. 2; Saskatchewan (Canada), laws of 1908, c. 6, sec. 17, 18 and c. 7, sec. 14, 15.

HISTORY OF INTERCHANGE OF SERVICE

Foreign countries

In most of the foreign countries the telephone system is owned and operated by the government and there is intercommunication on the entire system.

England.¹ The government owns the trunk lines and private or municipal corporations own the local exchanges. An agreement exists between the Postmaster General and the National Telephone company which provides for the intercommunication between the two systems. The trunks for connecting the exchanges are provided by the Postmaster General, the wires of the postoffice extending to the wall of the building in which the exchange of the National Telephone company is situated.

Italy.² The government owns the trunk lines and connects private systems. The telephone system of the Scieta Telefonica per I'Alta Italia, which controls several companies in upper Italy, connects with the national and the Swiss government lines.

¹ Report of Walter Burgess on the foreign situation, before the special telephone commission of the Chicago city council, April 3, 1907.

³U. S. Department of commerce and labor. Monthly consular and trade reports. March, 1907, p. 183-4.

Sweden.¹ The telephone systems in Sweden are principally government owned, but there are a few systems privately owned, similar to co-operative systems in the United States. There is, however, one large private company in Stockholm which controls the systems of the Bell Telephone company of Stockholm and the Stockholm General Telephone company. Both companies operate in conjunction and are practically one system. In 1889 the government built an exchange in Stockholm and began active competition with the private company. Intercommunication was given between the private and the government systems until 1903, for which a charge was made of 2.7 cents per message. In 1903 difficulty arose as to the charge for such connection.

The government wished to reduce the price and the company desired to retain the charge as it then existed. The question became very acute and resulted in the discontinuance of the intercommunication. The city authorities refused further grants of rights of way to either company until the connection was renewed. As the result of the controversy and the great demand brought to bear by the public the companies established an "Exchange Bureau,"—each company renting a phone of the other and employing an operator to transmit each other's messages for which the government made a charge of 1.37 cents and the private company 2.7 cents per message which rates correspond with the pay station rates, of each

¹ Report of Walter Burgess on the foreign situation, before the special telephone commission of the Chicago city council. April 3, 1907.

company respectively, for a three minute conversation.

United States

Interchange of service by phone companies is accomplished either by the t nsmission of each other's messages or by actual physical connection of their respective lines.

Interchange of service in the toll traffic has been furnished for many years whenever satisfactory contracts could be entered into by noncompetitive companies.

Compulsory interchange between competitive as well as noncompetitive companies has been agitated for the last ten years, or practically ever since the appearance of competition in the telephone field.

As early as 1897 a bill (No. 357 S.) was introduced in the Wisconsin legislature requiring toll companies to furnish connection with their toll lines to local exchange companies. Since that time bills requiring such connections and also connections between local exchanges of competitive companies have been introduced every regular session of the Wisconsin legislature.

Many of the other states have had the same experience. Bills have been introduced in Illinois, Michigan, Missouri, Mississippi, Montana, New Jersey, New York, Ohio, Oklahoma, South Dakota and Texas.

LAWS AND JUDICIAL DECISIONS

Foreign countries

Saskatchewan (Canada), laws of 1908, c. 6, sec. 17. Every municipal council has power to enter into any agreement or agreements with any person controlling, owning or operating any private, foreign, rural or other telephone system for the purpose of providing for connection, intercommunication, joint operation, reciprocal use or transmission of business as between any such system and any municipal telephone system and make such arrangements as are deemed advisable for the proper apportionment of expenditures and commissions, the division of receipts and profits, payment of compensation or such other adjustments as may be necessary under any such agreement.

sec. 18. In case for any cause any person controling, owning or operating any private or rural telephone system refuses, fails or neglects to enter into an agreement with a municipal council for any or all of the purposes mentioned in section 17 the council reports the matter to the commissioner of railways, telegraphs and telephones, who has power to take all steps necessary or expedient to provide therefor upon such terms and conditions as may be determined by him.

c. 7, sec. 13, 14. The same provisions are made in regard to the interchange of service between rural systems as are made by chapter 6 in regard to the interchange of service between municipal companies and rural companies.

England. 62 and 63 Vict., c. 38, sec. 5. If the license of an existing company is, under the provision of this section, extended in respect of any exchange area for a period of not less than ten years beyond the term existing at the passing of this act (1899), the company is required, at the request of any other licensee of the Postmaster General under circumstances and on such terms and conditions as may be prescribed by the Postmaster General, to furnish proper facilities for the transmission of messages from the patrons of one system to the patrons on another.

United States

Transmission of messages

Connecticut. Gen. St. 1902, sec. 3912. Requires telephone companies to receive dispatches for any other telephone company and transmit them in the order received on payment of their usual charge. Penalty for violation \$100 for every neglect so to do.

Kentucky. Const. 1891, sec. 199. Requires telephone companies operating exchanges in different towns or cities or other public stations to receive and transmit each other's messages without reasonable delay or discrimination.

Louisiana. Laws of 1904, p. 28. The railroad

commission has power to require all telephone companies upon demand of any person to attach and make joint rates for the transmission of messages by telephone between all points in the state but a telephone company is not required to connect its wires and apparatus with the wires and apparatus of another company.

Missouri. Ann. St. 1906, sec. 1255. Telephone companies are required to receive and transmit dispatches for other companies under a penalty of \$200.

sec. 1256. When a person sending the dispatch desires to have it forwarded over the lines of other telephone companies, whose termini are respectively within the limits of the usual delivery of such companies, to the place of final destination and tenders to the first company the amount of the usual charges for the distance to the place of final delivery, it is the duty of the company to receive the same and without delaying the dispatch, to pay to the succeeding line the necessary charges for the remaining distance. It is the duty of the succeeding line or lines to receive the same and forward the dispatch in the same manner as if the person sending the same had applied in person to the agent of such line or lines and paid to him the usual charges.

A company must have refused to transmit a written dispatch. It is not liable to the penalty for the refusal to place party in direct personal connection with another over its telephone system. Pollard v. Missouri and K. Telephone Company (1905), 90 S. W. 121.

New York. Laws 1890, c. 566, art. 8, sec. 103. Requires every telephone corporation to receive and transmit dispatches from and for other telephone corporations.

A reasonable construction of this statute does not require one telephone company to supply connections with its system to another company so that the latter may utilize the connected system as a part of its own and transmit thereover is own messages on payment of the merely nominal sum required of ordinary subscribers. People ex rel. Postal Tel. Cable Co. v. Hudson River Tel., (1887), 19 Abb. N. C. 466.

Ohio. Bates Ann. Rev. St. 1787–1906. sec. 3462. Requires every company operating a telegraph line to receive dispatches from and for other telephone companies.

sec. 3471. The provision of the statutes relating to telegraph companies applies to telephone companies.

Virginia. Laws of 1906, c. 310, sec. 2. It is the duty of every telephone company doing the business of transmitting and receiving messages for compensation in this state to transmit dispatches and messages from and for every telephone company upon the payment of the established charges therefor, under a forfeiture of \$100 for a refusal to the person wishing to send such message.

Washington. Const. 1888, art. 12, sec. 19. Any association or corporation organized for the purpose, or any individual may have the right to construct and maintain line of telegraph and telephone within the state. Such companies are required to receive and transmit each other's messages without delay or discrimination.

This provision of the constitution is not self executing. State v. City of Spokane, (1901), 63 Pac. 1116.

Physical connection

Alabama. Const. 1901, sec. 239. Telephone companies shall have the right to construct and maintain lines of telephone within this state and connect the same with other lines.

Idaho. Const. 1888, art. 11, sec. 13. Any telephone company shall have the right to connect its line of telephone with other lines and the legislature shall by general law of uniform operation provide reasonable regulations to give full effect to this section.

Indiana. Rev. St. 1901, sec. 5529. Requires every telephone company to supply all applicants for the telephone connections and facilities with such connections without discrimination against any individual or company engaged in the same business by requiring as a condition for furnishing such facilities that they shall not be used in the business of the applicant.

Telephone companies are required not only to furnish a telephone instrument and connections but also facilities to use such instrument. Central Union Telephone Co. v. Fehring, 1896, 146 Ind. 189.

Maine. Rev. St. 1903, c. 55, sec. 12. Requires every corporation operating a telephone line within the state to allow any other telephone corporation connection between such lines upon the same rates as charged for the same distances upon the lines of the corporation so connecting and the same charges for the use of telephone exchanges as for the patrons of such corporations.

Maryland. Code of Public and General Laws of

1904, art. 23, sec. 336. Requires every telephone company engaged in the general telephone business to supply all applicants for telephone connections and facilities with such connections and facilities without discrimination; nor shall such companies discriminate against any individual or company engaged in the same business by requiring as a condition for furnishing such facilities that they shall not be used in the business of the applicant or otherwise for any lawful purpose.

Montana. Const. 1888, art. 25, sec. 14. Telephone companies have the right to connect their lines of telephone with other lines of telephone within the state and the legislature shall by law of uniform operation provide reasonable regulation to give full effect to this section.

Civil Code, 1895, sec. 1001. Telephone companies have the right to connect their respective lines with other lines and in case such corporations cannot agree as to the compensation to be paid for the privilege of connection, the acquiring of the right by the one to use the line of the other, may be had in proceedings under the Code of Civil Procedure and the damages assessed and the right of connection granted as provided in the Code of Civil Procedure.

Under the Montana constitution and statutes a telephone company is compelled to furnish physical connection and the use of its line to any other telephone company. If no agreement is reached the damages must be assessed as provided under Code of Civil Procedure, sec. 2220. Billings Mutual Tel. Co. v. Rocky Mountain Bell Tel. Co., (1907), 155 Fed. 207.

Oklahoma. Const. 1907, art. 9, sec. 5. All telephone companies operated for hire shall transmit each other's

messages and make physical connections with each other's lines under such rules and regulations as may be prescribed by law or by any commission created by this constitution, or any act of the legislature for that purpose.

Since the adoption of the constitution the telephone companies are complying with this provision and the corporation commission which has the power to regulate telephone companies has not found it necessary to make any order prescribing rules and regulations regarding physical connection.

South Carolina. Laws of 1904, p. 496. The railroad commission has the power to require reasonable connections to be made and maintained when practicable between the lines, stations or exchanges of telephone companies and the lines or stations of private individuals, firms or corporations desiring such connections and fix and regulate tolls and charges therefor.

South Dakota. Laws of 1907, c. 239, sec. 8. The board of telephone commissioners have jurisdiction to compel the connection of different telephone lines in the state of South Dakota and any company so desiring is to make application to the board of telephone commissioners. If the commission after investigation determine public convenience demands such connection and the lines of the applicant are in proper condition, the commission shall order such connection to be made and shall apportion the expense thereof, provided no toll wire used exclusively for through business shall be compelled to connect except at its terminal points. Where the applicant is a competing company, no company shall be compelled to connect to

furnish service to points where its own lines run and where it can furnish the service itself.

sec. 9. Every telephone company whenever required by the board of telephone commissioners shall connect its lines with the lines of any other telephone company doing business in the same vicinity and shall furnish all reasonable and proper facilities for the exchange and switching of messages between such lines for a reasonable compensation and without discrimination and under such rules and regulations as the board of telephone commissioners may prescribe.

Texas. Laws of 1907, p. 462-3. Requires all telephone companies doing business in the state to make physical connections between their toll lines at common points for the transmission of messages or conversation from one line to another. Such connection to be made through the switchboard of such companies so that the persons so desiring may converse from points on one of such lines to points on another.

sec. 4. The city council or commissioner's court of any city shall upon the application of 100 resident citizens, or upon its own motion, hear such evidence as they think necessary, and determine whether or not it would be necessary for public convenience and just to the telephone companies to make such connection, whereupon they shall enter on record their findings and shall set out in such order the conditions upon which such arangements shall be made and shall decide what proportion of the expense of such connection shall be paid by each company.

sec. 5. Any company failing to so connect forfeits

to the state \$10 for each day they so neglect, the penalty not to be operative against a company which is prevented from making connections through the fault or omission of another company so long as such fault or omission shall cause such failure on its part to so connect. Right of appeal to the court having jurisdiction is provided.

Vermont. St. 1894, sec. 4255. Requires a telephone company receiving a message directed to any person off from such company's lines, if such person resides on the line of another telephone company, to transmit such message to such other company's line to be by it transmitted to the place of destination, if both companies have offices in the same village or city in this state. No extra charge shall be made for said transfer within the usual limits of delivering messages in said city or village and the company receiving the same shall make no extra charge for an additional date construed by them to be necessary because of the transfer.

sec. 4257. A person or corporation owning or operating a telephone exchange or service in this state is required on application of a telephone company to furnish such company with the use of a telephone or telephones and telephone service and connection with the respective exchanges and the subscribers using them upon reasonable terms without discriminating between telegraph or telephone companies as to the connection, service or use of instruments furnished and charges made.

SALIENT FEATURES

The requirements for interchange of service by the transmission of each other's messages or by actual physical connection of the respective systems in most states are very general. Montana, South Dakota and Texas have enacted laws which enter more into detail.

Jurisdiction

People. In Montana, Oklahoma, Idaho, Kentucky and Washington the people have retained jurisdiction by requiring interchange of service under constitutional provisions.

See Montana, Const. 1888, art. 25, sec. 14; Oklahoma, Const. 1907, art. 9, sec. 5; Idaho, Const. 1888, art. 11, sec. 12; Kentucky, Const. 1891, sec. 199; Washington, Const. 1888, art. 12, sec. 19.

Legislature. In states where there is no constitutional provision requiring interchange of service the legislature has exercised jurisdiction by direct requirement or by delegating the power to require such service to an administrative body, such as telephone commission, railroad commission, corporation commission or municipal authority.

Telephone commission. South Dakota, laws of 1907, c. 239 sec. 8.

Railroad Commission, Louisiana, laws of 1904, p. 28; South Carolina, laws of 1904, p. 496.

Corporation commission. Oklahoma, Const. 1907, art. 9, sec. 5.

Municipal authority. Texas, laws of 1907, p. 462-3.

Compulsory interchange

In some of the states telephone companies are compelled to furnish interchange of service.

By statutes. See Connecticut, Gen. St. 1902, sec. 3912; Ohio, Bates, Ann. Rev. St. 1787–1906, sec. 3462, 3471; Oklahoma, Const. 1907, art. 9, sec. 5; Kentucky, Const. 1891, sec. 199; Missouri, Ann. St., 1906, sec. 1255; New York, laws of 1890, c. 566, art. 8, sec. 103; Saskatchewan (Canada), laws of 1908, c. 6, sec. 17, 18 and c. 7, sec. 13, 14; Vermont, St. 1894, sec. 4257; Virginia, laws of 1906, c. 310, sec. 2.

By administrative body. See Louisiana, laws of 1904, p. 28; South Carolina, laws of 1904, p. 496; South Dakota, laws of 1907, c. 239.

Optional interchange

In many states the interchange of service is optional.

See Alabama, Const. 1901, sec. 239; Idaho, Const. 1888, art. 11, sec. 13; Indiana, Rev. St. 1901, sec. 5520; Maine, Rev. St. 1903, c. 55, sec. 12; Maryland, code of public and general laws, 1904, art. 23, sec. 336; Montana, Const. 1888, art. 25, sec. 14, St. Civil Code, 1895, sec. 1001.

Application for interchange of service

Telephone company. The application must come from a telephone company desiring interchange of service in many of the states.

See Alabama, Const. 1901, sec. 239; Idaho, Const. 1888, art. 11, sec. 13; Indiana, Rev. St. 1901, sec. 5529; Maine, Rev. St. 1903, c. 55, sec. 12; Maryland, Code of public and general laws, 1904, art. 23, sec. 336; Montana, Const. 1888, art. 25, sec. 14, St. Civil Code, 1895, sec. 1001; Saskatchewan, (Canada), laws of 1908, c. 6, sec. 17, 18 and c. 7, sec. 13, 14; South Dakota, laws of 1907, c. 239.

Citizens or municipal authority. In Texas the municipal authority upon its own motion or upon the application of 100 resident citizens must determine the necessity and justice of the physical connection for which application is made.

See Texas, laws of 1907, p. 462-3.

Expense of connection

Special commission. In Montana, in case the companies cannot agree, the expense of connection is assessed by a commission appointed by the court as provided in eminent domain proceedings, under the code of civil procedure.

See Montana, Civil Code, 1895, sec. 1001.

Telephone commission. In Saskatchewan (Canada) and in South Dakota the telephone commissioners apportion the expense between the connected companies.

See Saskatchewan, laws of 1908, c. 6, sec. 17, 18 and c. 7, sec. 14, 15; South Dakota, laws of 1907, c. 474.

Railroad commission or corporation commission. In South Carolina the railroad commission and in Oklahoma the corporation commission apportion the cost of the connection.

See South Carolina, laws of 1904, p. 496; Oklahoma, Const. 1907, art. 9, sec. 5.

Municipal authority. In Texas the city council or commissioners court of any city decides what proportion of the expense of the connection is to be paid by each company.

See Texas, laws of 1907, p. 462-3.





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MORTGAGE TAXATION

ROBERT ARGYLL CAMPBELL

MADISON WISCONSIN



MORTGAGE TAXATION

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ROBERT ARGYLL CAMPBELL

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CONTENTS

	Page
REFERENCES	3
INTRODUCTION	5
LAWS AND JUDICIAL DECISIONS	9
History and present law	9



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See Labour

INTRODUCTION

The proper method of taxing mortgages is still an unsettled problem. In a great majority of states mortgages are taxable as personal property to the holder at his place of residence and the real estate given as security is taxable to the owner at the situs of the property. It is the system usually known as double taxation of the mortgage debt and the mortgaged property. The mortgagor almost without exception pays taxes on the property without deduction and oftentimes agrees to pay taxes on the mortgage in the hands of the owner, should it be taxed.

These laws providing that mortgages are taxable as personal property are never fully enforced and it is only in rare instances and for short periods that any considerable percentage of the mortgages are listed for taxation at their full value.

A percentage of the total number of mortgages is listed, it is true, but that percentage is small and is usually made up of mortgages where both parties to the contract are residents of the same assessment district, mortgages brought to light by the settlement of estates, and mortgages representing but a fractional part of large holdings of similar property which are

given in to allay suspicion and thus aid in concealing the amount actually owned and held.

Only exceptions to the laws taxing mortgages as personal property will be noted here. When objections were raised to the system of double taxation the natural solution of the problem was to tax mortgages as an interest in the real estate. When this is done the vital question is whether or not the parties to the mortgage are permitted to enter into a contract concerning the payment of the taxes. If this privilege is not granted and the law is enforced then each party to the mortgage must pay taxes on his respective interest-the mortgagee on the value of the mortgage at the situs of the property and the mortgagor on the value of the real estate minus the indebtedness. contracts are permitted then the mortgagor usually agrees to pay all taxes on the encumbered property and the mortgagee is exempt,-the theory being that the mortgagor will get the loan at a reduced rate of interest by agreeing to relieve the mortgagee from all obligations with regard to taxes.

Both systems have been tried. California is the best example of a state where contracts were not permitted. This system prevailed there from the time of the adoption of the second constitution in 1879 until the court held that separate contracts were permissible (120 Cal. 220, 1898). The objectional part of the constitutional provision was repealed in 1906 and a new law passed in 1907 permitting contracts. Missouri had a similar law (1900) but the supreme court

of the state declared it unconstitutional on the ground that since the mortgages of certain corporations were not to be treated as an interest in the real estate, such corporations were thus deprived of the equal protection of the law provided for under the fourteenth amendment.

At the present time mortgages in California, Connecticut, Massachusetts, New Jersey and Wisconsin are taxable as an interest in the real estate and the parties to the mortgage are permitted to enter into a contract concerning the payment of the taxes. Michigan and Oregon had similar laws but they were both silent with regard to contracts. The Michigan court in Latham v. Board of Assessors (91 Mich. 509, 1892) held that such agreements were permissible. In both states the laws have since been repealed (1893).

If the actual enforcement and working out of the laws are considered, Colorado belongs in the same class as Massachusetts and Wisconsin. The law provides that the mortgage and the property given as security are to be assessed as a unit and that the mortgages are not to be returned or assessed.

In Indiana a somewhat different system prevails. The mortgager may have the amount of the mortgage indebtedness not exceeding seven hundred dollars deducted from the assessed value of the mortgaged premises. In no case can this deduction be greater than one half of the assessed value of the real estate. If this deduction is claimed and allowed the mortgage debt or that portion of it which is taxable is assessed

as personal property to the mortgagee at his place of residence.

In Pennsylvania mortgages are uniformly subject to a tax of four mills on the dollar; the proceeds from this source are divided between the state and the counties.

Mortgagees in certain enumerated counties of Maryland are required to pay a tax of eight per cent upon the gross amount of interest covenanted to be paid on mortgages held by them.

Idaho and Washington exempt mortgages from taxation by law.

In Alabama, Minnesota, New York and Virginia mortgages are subject to a recording or privilege tax paid at the time of recording depending on the amount of the tax of the mortgage debt

All other states tax mortgages as personal property.

LAW AND JUDICIAL DECISIONS, UN TED STATES

Alabama

History. In Alabama prior to 1903 mortgages were subject to taxation as personal property (Code, 1896, vol. 1, sec. 3911, sub sec. 7). In 1903 (Acts, 1903, p. 227) a privilege tax of fifteen cents on every one hundred dollars was imposed at the time of recording. The present law was passed in 1907, and is but a slight modification of the law of 1903.

Constitution, 1901, art. 11, sec 1. All taxes levied on property in this state shall be assessed in exact proportion to the value of such property.

Present Law, Acts, 1907, p. 455, sec. 1. No mortgage, deed of trust, contract of conditional sale, or other instrument in the nature of a mortgage executed so as to convey real property or any interest in real or personal property situated within the state is to be received for record unless a privilege tax has been paid. This tax amounts to fifteen cents, if the indebtedness secured is one hundred dollars or less; and an additional fifteen cents is added for every additional one hundred dollars or fraction thereof. The law states definitely that the tax is to be paid by the lender.

When the mortgage is presented to the judge of probate of the county in which any of the property conveyed is situated and the tax is paid, the probate judge makes a certification to that effect on the instrument, and then the mortgage may be recorded in any county where property given as security is situated without any additional tax, except the fee for recording. An extension or renewal contract is subject to the same tax as the original mortgage. If the tax prescribed by this act has been paid, neither the mortgage nor the debt secured is to be subject to an ad valorem tax, either for state, county, or municipal purposes. The probate judge receives 5 per cent of the amount collected by him as compensation for his services. Of the remainder, one-third is paid to the county treasurer of the county in which the taxes are collected, and two-thirds to the state treasurer. If the land which is given to secure the debt is situated in more than one county of the state, then, this onethird is divided among the county treasurers in proportion to the value of the property given as security in each county. In cases where only part of the property is within the state, the proportional part within and without is determined by the state board of compromise, and the taxes paid accordingly.

It is made a misdemeanor, punishable by a fine, for the probate judge to file for record any mortgage upon which the taxes have not been paid.

Arizona

Revised Statutes, 1901. In Arizona (sec. 3847) property under mortgage or lease is listed by and taxed to the mortgagor or lessor, unless it is listed by the mortgagee or lessee. With certain enumerated exceptions (sec. 3834) all property is subject to taxation, but double taxation is not permitted. Liabilities may be deducted from solvent debts (sec. 3835).

Arkansas

Constitution, 1874, art. 16, sec. 5. All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the state.

Present Law. Dig. of St., 1904. In Arkansas mortgages are taxed as personal property. The law requires (sec. 6873) that all property, including moneys and credits, shall be taxed, and credits are defined (sec. 6872) as the excess of the sum of all legal claims and demands over and above the sum of legal bona fide debts which the person owes. Every person (sec. 6899) is required to list all moneys loaned by him, but is not required (sec. 6902) to list a greater portion of any credits than he believes can be collected.

Court Decisions. A note given for land, and the land itself, are both subject to taxation; the note as property of the holder, and the land as property of the purchaser. Ouachita County v. Rumph, 43 Ark. 525, 1884.

California.

History. The constitution of 1849 (art. 11, sec. 13) stated that taxes shou'd be uniform and equal throughout the state and that all property should be taxed in proportion to its value. The statutes enacted about the same time (1849-50, c, 52, sec. 2, 4) provided that mortgages were to be taxed as personal property. In 1851 (c. 6, sec. 21) a special clause was incorporated, and money loaned at interest was made subject to a tax of one dollar for each one hundred dollars of value. This system was used for one year only, when change was made and mortgages were made taxable as an interest in the real estate (St. 1852, c. 3, sec. 13)—the mortgagee to pay taxes on the money secured by the mortgage, and the mortgagor on the value of the property less the value of the mortgage. The next year (1853) the mortgagor was required (c. 167, art. 10, sec. 9) to pay taxes on the value of the property without deduction, and the mortgagee on the amount of money lent (c. 167, art. 1, sec. 1). In addition to this persons engaged in the business of lending money were subject to a license tax of ten cents for every one hundred dollars of business estimated to have been done (c. 167, art. 3, sec. 1).

This system continued until 1870 when an effort was made to relieve the owners of encumbered real estate from double taxation (St. 1869-70, c. 424, 485). The law read as follows: "No mortgage or lien given and held upon real estate, or the debt thereby secured,

or promissory note secured by mortgage, shall be assessed upon the books of any assessor, state, county, or otherwise." At first the courts held that mortgages were property, and as such could not be exempt from taxation under the constitution (People v. Eddy, 43 Cal. 331, 1872; Lick v. Austin, 43 Cal. 590, 1872). Later the court practically reversed these decisions and stated that mortgages should not be taxed because such action would violate the constitutional requirement providing that all taxation should be uniform and equal and that property should be taxed in proportion to its value. The court held that a tax on the mortgage and on the property given as security was a case of double taxation, and, as such, forbidden by the constitution. (People v. Hibernia Bank, 51 Cal. 243, 1876). See Savings and Loan Society v. Austin, 46 Cal. 415, 1873).

The present constitution in California was adopted in 1879 and did contain two sections relating to the taxation of mortgages. Under sec. 4, art. 13, mortgages were to be taxed as an interest in the real estate, and each party to the contract was to pay taxes on his respective interest; sec. 5 stated that all contracts by which a debtor was obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust or other lien, were to be null and void. Court decisions practically annulled that part of the law forbidding contracts, for in the case of London and San Francisco Bank v. Bandman (120 Cal. 220, 1898) the court held that an allegation and finding

which did not state that the agreement of the mortgagor to pay the taxes was part of the mortgage contract, was not broad enough to establish an agreement violative of the constitution.

Sec. 5 was actually repealed in November, 1906 (See Const. St., 1907) and the question of repealing sec. 4 is to be voted on by the people in November, 1908 (St. 1907, p. 1159).

Constitution, art. 13, sec. 4. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi-public corporations, in case of debt so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment, a full discharge thereof; provided, that if any such security or indebtedness shall be paid by any

such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year.

Present Law. Sec. 4, art. 13, of the constitution still remains in force, but sec. 5 has been repealed.

Statutes, 1907, c. 368, sec. 1. With minor changes in the punctuation and wording, sec. 4 of the constitution is reproduced in the statutes, but that part of the statutes that formerly corresponded to sec. 5 of art. 13 of the constitution has been materially changed since the repeal of that section in 1906. Now the parties to any mortgage are given the right to provide by contract that the debtor shall pay all or any taxes or assessments on the money loaned, or on the mortgage, deed of trust, or other lien, or on the property covered or the obligation secured. Such contracts are to be valid and constitute a waiver by the debtor of all rights to treat the payment of such tax or assessment as a payment on the amount loaned or secured.

sec. 7. To assist in the work of assessment, the recorder is required to transmit annually to the assessor a complete abstract of all mortgages remaining unsatisfied on the records of his office; this abstract to embrace all information requisite for the assessor. If partial payment has been made, the owner is authorized to make the proper deductions. This information would be of use to the assessor only in cases where no agreement had been entered into between the debtor and creditor as to the payment of the taxes.

Colorado

Constitution, 1876, art. 10, sec. 3. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.

Present Law. Mills' St., 1905, sec. 3806. In Colorado mortgaged property is taxed to the mortgagor and the mortgagee as such is exempt. Whenever any property within the state is mortgaged, the property and the notes, mortgage, deed of trust, trust deed, contract or other conveyance is to be assessed as a unit; the value of this unit for assessment purposes is to be equal to the value of the property only. Such contracts are not to be otherwise returned or assessed.

sec. 3924o. If the mortgagor fails or neglects to pay the tax, the mortgagee may pay it and include the amount with interest in any judgment rendered on the mortgage.

Connecticut

History. In the session laws of Connecticut for 1836-37 (c. 12, sec. 2) a statement may be found to the effect that mortgages were to be taxed to the owner as personal property. By 1852 it would seem that the custom had grown up of taxing mortgages as an interest in the property. At least the law stated that whenever in the making of any tax list, any real

estate was omitted or abated because of any indebtedness secured by a mortgage, the indebtedness was to be taxed in the town or district in which the real estate was situated. (Laws, 1852, c. 67, sec. 1.) If the creditor was a resident of the town or district in which the mortgaged property was situated, the amount deducted from the value of the property because of the mortgage debt was simply added to his list, but if he was a non-resident, a statement of his credits was made out and notice sent. He might then appear before the assessors or board of relief and show cause why such indebtedness should not be taxed to him. (Laws, 1852, c. 67, sec. 2.) A law somewhat similar was passed in 1865 (c. 93, sec. 1), and in 1867 it was provided that no greater amount of indebtedness was to be deducted from the list of any person than the assessed value of the property for which the indebtedness was contracted, (Laws, 1867, c. 25.)

The present law, the main provisions of which were passed in 1875 (c. 27), carried out the ideas introduced much earlier and provided for the taxation of mortgages as an interest in the real estate to an amount equal to the assessed value of the mortgaged land.

Constitution, 1818, art. 1, sec. 11. The property of no person shall be taken for public use without just compensation therefor.

Present Law. Gen. St., 1902, sec. 2319. Money lent at interest and secured by a mortgage which contains an agreement that the borrower is to pay the

taxes, is to be exempt from taxation to an amount equal to the assessed value of the mortgaged land. The excess of any such loan over the value of the real estate is assessed and taxed in the town where the lender resides.

sec. 2323. Money secured by mortgage upon real estate, where there is no agreement that the borrower shall pay the taxes, is assessed to the owner, but is assessed in the town where the real estate is situated and not at the residence of the mortgagee.

sec. 2326. The rule that tax payers need not list property located outside of the state if they can prove that such property has already been assessed, does not apply to money loaned at interest to non-residents. Such property must be listed.

Laws, 1907 (c. 160 as amended by c. 253, Laws, 1907). The Connecticut law contains a provision which permits any person to take or send any note, bond, or other chose in action, or a description of it, to the state treasurer, and pay a state tax of 2 per cent on the face amount for five years, or for a longer or shorter time at the same rate. The treasurer makes an endorsement upon the contract or gives a receipt stating that the tax has been paid. The instrument is then exempt from all other taxes. The state treasurer classifies all notes, bonds, choses in action upon which the state tax has been paid according to assessment districts, and sends these lists to the town c'erks.

Delaware

History. Laws, 1897 (c. 381 as amended by c. 25, Laws, 1898). It was the duty of the assessor to list for state and county purposes, at three-fourths of their value, all investments paying interest or yielding an income. Mortgages were included under investments. All such property, whether situated within the state or elsewhere, whether owned or held in trust, was to be assessed, unless it was taxed in some other state or county. It was declared to be the intention of the act to tax the owner and not the borrower or debtor. and any person asking, demanding, contracting for, or receiving any money or consideration on account of the tax or in reduction of the tax, or any person who imposed or tried to impose the tax or any part of it upon a debtor, was to be deemed guilty of a misdemeanor and subject to a heavy fine.

Where the creditor was a non-resident, the debtor was liable for the tax in the first instance, but must deduct the amount paid from the interest due or accruing on the debt. If the creditor refused to allow this deduction, he was to forfeit all the accrued interest and the debtor was not to make any payment to a creditor living outside of the state until the tax had been paid.

Railroads and other companies paying a stipulated tax in lieu of all other taxes were not included under the provisions of the law.

The tax amounted to thirty cents on the one hundred dollars of the assessment as made and returned by the assessor, and, as a rule, one-fourth of the money collected from this source went to the state, and threefourths to the county.

In the case of E. G. & T. Co. v. Donahoe (3 Pennewill's Del. Rep. 191, 1901) the court held this law unconstitutional. The original act was for the purpose of equalizing taxation for state and county purposes. The amendment considered municipal taxation as well without proper designations in the title. The court held that so much of the amending act as related to taxation for municipal purposes was unconstitutional and void under the constitution because not embraced within the title of the act, and that since the unconstitutional part could not be separated from the residue without emasculating the statute, that, therefore, the act as amended was unconstitutional and void.

Constitution, 1897, art. 8, sec. 1. "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, but the general assembly may by general law exempt from taxation such property as in the opinion of the general assembly will best promote the public welfare."

Present Law. Since the law of 1897 (c. 381 as amended by Laws, 1898, c. 25) was declared unconstitutional, the general assembly has not authorized a tax on mortgages. They are exempt by neg ect rather than by special provisions of the law.

Florida

Constitution, 1885, art. 9, sec. 1. The legislature shall provide for a uniform and equal rate of taxa-

tion, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes.

Present Law. Gen. St., 1906. In Florida mortgages are taxed as personal property. Both real and personal property are subject to taxation (sec. 428). Credits are included under personal property (sec. 432), and are defined to mean every claim and demand for money. The assessment roll should contain a statement of a'l mortgages except those given for purchase money (sec. 512).

Georgia

Constitution, 1877, art. 7, sec. 2, par. 1. "All taxes shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

Present Law. Code, 1895, Mortgages in Georgia are taxable as personal property. Both real and personal property are subject to taxation (sec. 767), and tax payers are required to make a return of the gross value of their notes and other obligations for money (sec. 833).

Idaho

Constitution, 1889, art. 7, sec. 5. "All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal: Provided, That the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just."

Present Law. Laws, 1907, p. 178. In Idaho the legislature took advantage of this provision and exempted all dues and credits secured by mortgage, trust deed, or other lien. This law has been in force since 1895. (Laws 1895, p. 48.)

Illinois

Constitution, 1870, art. 9, sec. 1. "The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property."

Present Law. Rev. St., 1905, c. 120. In Illinois mortgages are taxable as personal property. Every person is required to list all moneys loaned by him as owner or agent (sec. 6). Where a deed for real estate is held for the payment of a sum of money, the sum thus secured is considered personal property and is listed and assessed as credits (sec. 21); personal property, like real estate in Illinois, is assessed at one-fifth of its listed value (sec. 312). The usual deduction of debts from credits is allowed (sec. 27).

Indiana

Constitution, 1851, sec. 193. The general assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal.

Present Law. Ann. St., 1901, vol. 3, sec. 8417a, as amended by Laws 1903, c. 27, sec. 36. In Indiana mortgagors may have the amount of the mortgage indebtedness, not exceeding seven hundred dollars, still unpaid on the first day of March, deducted from the assessed valuation of the mortgaged premises for that year, and the amount remaining after the deduction has been made is to form the basis for assessment for the real estate. In no case is a deduction to be allowed greater than one-half of the assessed value of the real estate.

sec. 8417b. Any person wishing to avail himself of the provisions of the law is required to file with the auditor of the county where the estate is situated, a sworn statement of the amount of the mortgage indebtness unpaid on the first of March. The mortgagor must also give the name and residence of the mortgagee, assignce, owner, or holder of the mortgage, together with the record and page where the instrument is recorded and a brief description of the real estate given as security.

sec. 8417c. Where the mortgage indebtdness is liable for taxation in a county other than the one in which the real estate is situated, it becomes the duty of the auditor to certify and transmit a copy of this sworn statement as made by the mortgagor to the auditor of the county where the mortgagee, assignee, or holder of the mortgage resides.

Court Decisions. In a case brought into the Supreme Court to test the constitutionality of the law, the court held that the act of 1899 authorizing the deduction for the purpose of taxation, of mortgage indebtedness, not exceeding \$700, from the assessed valuation of real estate, such deduction not to be greater than one-half of the assessed valuation thereof, was not violative of the provisions of the state constitution requiring equality and uniformity in taxation, nor of the fourteenth amendment of the United States constitution relative to the right to the equal protection of the laws. State, ex rel. v. Smith, 158 Ind., 543, 1901,

Iowa

Constitution, 1857, art. 1, sec. 18. Private property shall not be taken for public use without just compensation first being made.

Present Law. Code, 1897. The system of double taxation of me tgages prevails in Iowa (sec. 1308, 1310). In order to get a more complete assessment of property, and especially of debts secured by mortgages, a law usually known as the tax ferret law was enacted. The present law was passed in 1900 (Laws, 1900, c. 50), Supp. to code, 1907, sec. 1407a and provides that the board of supervisors of any county may

contract in writing with any person to assist the proper officers in the discovery of property not listed and assessed as required by law. The total charges, fees, and expenses, are not to exceed fifteen per cent of the taxes paid into the county treasury.

Court Decisions. A case was brought to compel a bank to pay taxes on its moneys and credits. The sum which was given under the heading, "Moneys and Credits" was intended to represent the difference as returned by the assessor and the par value of the capital stock of the bank. The court held that where property had been listed and assessed by the assessor, a county treasurer has no authority to enter an additional assessment based on the difference between the assessed value and the actual value as found by him. Savings Bank v. Trowbridge, 124 Ia. 514, 1904.

Kansas

Constitution, 1859, art. 11, sec. 1. "The legislature shall provide for a uniform and equal rate of assessment and taxation."

Present Law. St., 1905... In Kansas mortgages are taxable as personal property. Both real and personal property are subject to taxation (sec. 8230), and personal property is defined to include mortgages and all evidences of debt secured by lien on real estate (sec. 8231). The abstract of the assessment roll which is forwarded to the state auditor by the county clerk contains a statement of the amount of mortgages held in the county (sec. 8340).

Kentucky

Constitution, 1891, sec. 171. "Taxes shall be levied and collected for public purposes only. They shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws."

Present Law. St., 1903, Acts, 1906. In Kentucky mortgages are taxable as personal property. Both real and personal property are subject to taxation (sec. 4020). The amount of notes secured by mortgages is included in the schedule which the tax payer is required to fill out. This schedule gives the value as fixed by the person assessed and by the assessor (sec. 4058).

Each county clerk is required to make out a list of all purchase money notes, mortgage notes, and other obligations for money due, except those owned by banks or trust companies. This list is to be sent to the county assessor and is to contain all the information necessary to enable the assessor to place such forms of property on the assessment roll. No mortgage or assignment is to be recorded unless the residence and post office address of the owner or holder is given. Acts, 1906, c. 22, art. 2, sec. 10.

Louisiana

Constitution, 1898, art. 225. Taxation shall be equal and uniform throughout the territorial limits of the

¹ A constitutional amendment is now pending, providing for the exemption of mortgages from taxation.

authority levying the tax, and all property shall be taxed in proportion to its value, to be ascertained as directed by law.

Present Law. Rev. Laws, 1904, vol. 2, p. 1541, sec. 1; p. 1548, sec.10. In Louisiana mortgages are taxable as personal property. Property subject to taxation includes money loaned at interest and the assessors are required to examine the records for such taxable property.

Mortgage notes, and indebtedness and all evidences of indebtedness are taxable only at the situs and domicile of the holder or owner. (Laws of 1908, act 170.)

Maine

Constitution, 1819, art. 9, sec. 8. "All taxes upon real and personal estate, assessed by authority of this state, shall be apportioned and assessed equally according to the just value thereof."

Present Law. St., 1903, c. 9. In Maine mortgages are taxed as personal property. Personal estate for the purpose of taxation includes money at interest and all obligations for money (sec. 5).

Maryland

History. In 1874 (c. 483, sec. 2) Maryland passed a law exempting mortgages from assessment and taxation; the law was repassed in 1880 (c. 122, sub. sec. 2, 3) and the exemption was made to apply only to mortgages on property wholly within the state. The law requiring all mortgages without exception to pay an eight per cent gross receipt tax was passed in 1896 (c. 120) and remained in force until 1904 (c. 405) when it was repealed in so far as it applied to certain enumerated counties and to Baltimore City and in the other counties where the law still remained in force all the revenue was to go to the county and not three-fourths to the county and one-fourth to the state, as formerly. Later (1906, c. 794) Dorchester was again placed in the list of counties where the income tax from mortgages was to be collected.

Constitution, 1867, as amended, Decaration of Rights, art. 15. Every person in the state, or person holding property therein ought to contribute his proportion of public taxes for the support of the government, according to his actual worth in real or personal property.

art. 3, sec. 51. The general assembly may by law provide for the taxation of mortgages upon the property in this state and the debts secured thereby in the county or city where such property is situated.

Present Law. St. 1904, vol. 2, art. 81, sec. 183. All mortgages in Worcester, Wicomico, Somerset, Carroll, Howard, Montgomery, Frederick, Washington, Garrett, and Dorchester counties are required to pay annually a tax of eight per cent upon the gross amount of interest covenanted to be paid each year on mortgages he'd by them. The tax is due and payable in the county where the mortgage is recorded and

¹ Not included in law as passed in 1908. ² The exact status of the law with regard to Garrett county is doubtful (1908).

all the taxes collected from this source are to be applied exclusively for county purposes (Laws, 1906, c. 793, sec. 1). Mortgages recorded for only a part of the year pay taxes in proportion to the time recorded (sec. 184).

Any contract contained in a mortgage executed after the passage of the law in which the mortgagor agrees to pay any or all taxes on the mortgage, debt, or the interest covenanted to be paid, is to be null and void (sec. 185), and mortgagees are required to take oath that they have not required and will not require the mortgagor or any person for him to pay the tax as levied. This oath is to be repeated if the mortgage is assigned at any time (sec. 186). Any mortgagor paying the tax that should have been paid by the mortgagee, is entitled, upon satisfactory proof, to have the amount paid with interest at 6 per cent deducted from the mortgage debt (sec. 188).

The clerk of the circuit court in the counties where the law applies, is required to render to the board of county commissioners a list of all mortgages recorded, released, and assigned during each month; this list to contain all the information necessary to enable the board to levy the tax. If the mortgagee refuses to pay the tax when due, his interest may be sold in the same manner as other property is sold for taxes (sec. 187).

Massachusetts

History. The present law is but a modification of the law as passed in 1881 (Laws, 1881, c. 304). Constitution, 1780, Pt. Second c. 1, sec. 1, art. 4. The general court has power to impose and levy proportional and reasonable assessment, rates, and taxes, upon all the inhabitants of, and persons resident and estate lying, within the said commonwealth.

Present Law. Rev. Laws, 1902, c. 12 and 13. In Massachusetts mortgages are taxed as an interest in the real estate, and the parties to the mortgage may enter into a contract as to the payment of the taxes.

- c. 12, sec. 16. If any person has an interest in real estate, not exempt from taxation, as holder of a duly recorded mortgage, the amount of his interest is to be assessed as real estate in the place where the land lies, and the mortgagor is to be assessed only for the value of the real estate, after deducting the assessed value of the interest of the mortgagee. If the estate is situated in two or more places, the amount of the mortgagee's interest assessed in each is to be in proportion to the assessed value of the land given as security.
- c. 12, sec. 17. The mortgagee's interest in the real estate is not to be assessed at a greater sum than the fair cash valuation of the land and buildings.
- c. 12, sec. 45. The mortgagor or mortgagee may bring to the assessor of the city or town where the real estate lies, a statement, under oath, of the amount secured, together with the name and residence of every holder of an interest therein, either as mortgagor or mortgagee.
- c. 13, sec. 36. If a mortgagee of land situated in the place of his residence gives a written notice to

the collector that he holds a mortgage on certain described land, the demand for payment is to be made on the mortgagee instead of the mortgagor.

c. 13, sec. 64. When the mortgagee pays taxes that should have been paid by the mortgagor, the amount paid is added to the obligation; and when the mortgagor pays taxes that should have been paid by the mortgagee, the amount paid is deducted from the mortgage debt, unless in either case the parties have otherwise agreed in writing.

Michigan

History. According to the law of 1882 (Acts no. 9, sec. 13) and the law of 1885 (Acts no. 153, sec. 13) mortgages were required to be listed as personal property. The mortgage was taxed in the same manner in 1887, Acts no. 262, but a more determined effort was made to get all the mortgages in the state. The plan followed was to have the registers of deeds report all mortgages recorded in their offices, to the supervisors and assessing officers of their respective counties, and to the registers of deeds of other counties where the mortgagee had his place of residence. In 1891 (Acts no. 200) a law was passed providing that mortgages were to be taxed as an interest in the real estate, and that each party should pay taxes on his respective interest. Nothing was contained in the law forbidding contracts. In a case brought under this law, the court held that it was constitutional and that the mortgagor would, as under former statutes, be

bound to pay the entire tax, subject only to the relief afforded him if the tax assessed against the mortgage interest was paid by the mortgagee, and that there was no obstacle in the act to prevent an agreement by the mortgagor to pay all taxes which might in the future be assessed against all interests in real property owned by him, including the interest as granted by the mortgagee. (Common Council v. Assessors, 91 Mich. 78, 1892.) The court also held that it was within the power of the parties to the mortgage to enter into an agreement that the mortgagor should pay the taxes assessed against the property, and that it was not the purpose of the legislature to limit that power. (Latham v. Board of Assessors, 91 Mich. 509, 1892.)

The law of 1891 was repealed in 1893 (Laws, no. 206) and the old law providing for the taxation of mortgages as personal property reenacted. The contract that the mortgagor is to pay all taxes on the mortgage or indebtedness secures, is very common in the mortgage forms in Michigan at the present time. The court has held that a covenant in a mortgage to pay all taxes levied upon the mortgaged property, "or upon or on account of this mortgage or the indebtedness secured hereby," is an agreement to pay the personal tax assessed against the mortgage on account of the mortgage, and that an agreement by a mortgagor to pay the taxes assessed upon the mortgage as the personal property of the mortgagee is usurious where the lender knew that the aggregate of interest

and taxes would exceed the maximum rate of interest allowed by statute, but it is not usurious where he believed it would not exceed that rate. (Green v. Grant, 134 Mich. 462, 1903)

Michigan

Constitution, 1850, art. 14, sec. 11. The legislature shall provide a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law.

Present Law. Complied Laws, 1897. In Michigan mortgages are taxable as personal property. (sec. 3824, 3831)

Minnesota

Constitution, art. 9, sec. 1. The power of taxation shall never be surrendered, suspended, or contracted away. Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes. (Amendment passed in 1906)

Present Law. Laws, 1907, c. 328. In Minnesota mortgages are subject to a registration tax of fifty cents on the one hundred dollars, or major fraction thereof. A mortgage is defined as any instrument creating or evidencing a lien of any kind on real property, real estate, or land, given or taken as security for a debt, even though such debt may also be secured in part by a lien upon personalty. An executory contract for the sale of land is also treated as a mortgage, the unpaid balance to be considered as the face value. The law does not apply to correction

mortgages, mortgages taken in good faith by persons or corporations whose personal property is expressly exempt from taxation by law, or to mortgages of persons or corporations whose property is taxed upon the basis of gross earnings, or other method of commutation in lieu of all other taxes.

The tax imposed amounts to fifty cents on each one hundred dollars, or major fraction thereof, of the principal debt or obligation secured by real property situated within the state,

If the real estate given as security is situated partly within and partly without the state, the tax imposed by the state of Minnesota is in the proportion that the value of the real estate within the state bears to the value of the entire property given as security, and if the real property given as security is situated in more than one county of the state, the entire tax is first paid in the county where the mortgage is presented for record, and then this amount is divided between or among the counties in the same ratio as the assessed value of the real property covered by the mortgage in each county bears to the assessed value of all the property described in the mortgage. In the case of a mortgage given in trust, to secure the payment of bonds or other obligations to be issued, a statement may be incorporated, showing the amount already issued or to be issued forthwith. The tax is computed upon this amount and no obligations issued in excess of this aggregate are to be valid for any purpose unless the additional tax is paid and the receipt properly endorsed.

All mortgages together with the debts or obligations secured and the papers evidencing such debts, are to be exempt from all other taxes if the provisions of this law have been complied with, but the payment of this tax does not exempt such property from the operations of the law relating to the taxation of gifts and inheritances, or those governing the taxation of banks, savings banks, or trust companies.

The tax imposed by this act is paid to the treasurer of the county in which the mortgaged land or some part of it, is situated. A receipt showing that the tax has been paid is endorsed on the mortgage by the treasurer, is countersigned by the county auditor and then the mortgage together with the receipt is recorded by the register of deeds. Neither the mortgage, papers relating to its foreclosure, nor any assignments or satisfaction is to be registered, unless the tax has been paid, and in addition to this, neither the mortgage nor any record of it is to be received as evidence in any court or to have any validity as notice unless the provisions of this act have been complied with.

All mortgages recorded prior to April 30, 1907, may become taxable under the provisions of this law if the owner pays the tax upon the amount of the debt secured and obtains the treasurer's receipt showing that the payment has been made. This receipt is then recorded on the margin of the mortgage record.

The taxes paid to the county treasurers are to be apportioned and distributed in the same manner as the real estate taxes paid upon the real estate described in the mortgage.

Mississippi

Constitution, 1890, sec. 112. Property shall be assessed for taxes under general laws and by uniform rules according to its true value.

Present Law. Code, 1906, sees. 4258, 4266. Mortgages in Mississippi are taxable as personal property. Money loaned at interest either within or without the state, is to be assessed and taxed to the owner at his place of residence.

Missouri

History. A joint resolution was drawn up in 1899 (Laws, 1899, p. 383) providing for an amendment to the constitution whereby mortgages and mortgaged property were to be taxable under a law very similar to the California law of 1879. This amendment was adopted by the people in 1900 (Laws 1905, p. 315). In a case arising under the law the court held that this amendment so discriminated between corporations and persons—a corporation being for the purpose of taxation a "person" within the fourteenth amendment—as to deny to railroads and other quasi public corporations "the equal protection of the law," in that it required the value of farm lands to be lessened, for taxation purposes, by the value of such security, but

did not permit the value of the property of such corporations to be decreased by the value of their bonded and other indebtedness. The constitutional provision was held unconstitutional. (Russell v. Croy, 164 Mo. 69, 1901)

A California case involving the same question was declared constitutional (C. P. R. R. Co. v. Board of Equalization, 60 Cal. 35, 1882), and unfortunately when a group of similar California cases were carried to the Supreme court of the United States they were decided upon other grounds. (118 U. S. 394. See also 18 Fed. Rep. 385.) After the law was declared unconstitutional in Missouri a joint resolution was passed in 1901 to repeal it (Laws 1901, p. 261), and it was repealed by a vote of the people in 1902 (Laws 1905, p. 317).

Constitution, 1875, art. 10, sec. 3. Taxes may be levied and collected for public purposes only, they shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.

sec. 4. All property subject to taxation shall be taxed in proportion to its value.

Present Law. Ann. St. 1906. In Missouri at the present time mortgages are taxable as personal property. The term "credits" is defined to include all money loaned and all indebtedness by deed, contract, mortgage or pledge of property of whatsoever kind, (sec. 9123), and the list of every taxable person must

contain an aggregate statement of all solvent notes secured by mortgage or deed of trust (sec. 9144).

The county recorders are required to keep a mortgage list with such information as may be necessary to enable the assessor to place all mortgages on the assessment rolls (sec. 9173).

Montana

Constitution, 1889, art. 12, sec. 2. Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

Present Law. St. 1895. In Montana mortgages are taxable as personal property. The term "credits" is defined to mean those solvent debts, secured and unsecured, owing to a person (sec. 3680, 6th.). The assessor must require a statement under oath from each person; this statement to contain a list of all mortgages held by them (sec. 3701.). As an aid in the work of assessment the county clerk is required to transmit annually to the assessor a complete abstract of all unsatisfied mortgages, deeds of trust, contracts, and other obligations, by which any debt is secured. If the property given as security is located in more than one county, it is the duty of the assessor to transmit such information to the state board of Equalization. The board then fixes the proportional value to be assessed in each county. Similar difficulties arising

within the county are settled by the assessor (secs. 3786, 7).

Nebraska

Constitution, 1875, art. 9, sec. 1. The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its, property and franchises.

Present Law. Ann. St., 1903. In Nebraska mortgages are taxable as personal property. Property owners are required to list all moneys vested or loaned by them, either as principal or agent. (sec. 10427). In Nebraska according to law, the actual value of the taxable property is ascertained, but it is only assessed at 20 per cent of such valuation (sec. 10411).

It is the duty of the register of deeds, county clerk, county judge, clerk of the district court, and all other county officers, to assist the county assessor in the examination of the records of their respective offices, and to give to the county assessor any information in their possession that will assist him in his work of assessment (sec. 10513).

Nevada

Constitution, 1864, art. 10, sec. 1. The legislature shall provide by law for a uniform and equal rate of assessment and taxation.

Present Law. Comp. Laws, 1900. In Nevada

mortgages are taxable as personal property. The term "personal property" includes all moneys at interest secured by mortgage or otherwise (sec. 1082).

Court Decisions. The court has held that a debt secured by mortgage is subject to taxation, although the mortgage is indebted to an amount equal to or exceeding the amount of his mortgage; (Drexler v. Tyrrell, 15 Nev. 114, 1880) and that the legislature under the constitution, cannot exempt money at interest secured by mortgage (State v. Carson Savings Bank, 1882, 17 Nev. 146).

New Hampshire

Constitution, 1792 as amended 1902. Part second, art. 6. The Public Charges of Government or any part thereof may be raised by taxation upon polls, estates, and other classes of property, including franchises and property when passing by will or inheritance.

Present Law. St. 1901, title 9, c. 55, sec. 7. In New Hampshire mortgages are taxable as personal property. Personal property liable to taxation includes money on hand or at interest more than the owner pays interest for, money loaned on any mortgage, pledge, obligation, note, or other security, whether on interest or interest to be paid or received in advance.

New Jersey

History. In New Jersey, legislation relating to mortgage taxation began as early as 1868. All mort-

gages on real and personal property within Passaic, Morris, Hudson, Union and Essex counties, and within the city of New Brunswick were to be exempt from taxation in the hands of any inhabitant of the state (c. 382). It would seem that mortgages in the other counties were to be taxed and that real and personal property was to be assessed at its full and fair value without any deduction for mortgages (c. 523).

The next year (1869) a law was passed (c. 511)providing that all mortgages upon real estate, chattels
or personal property taxable by law in Hudson, Union,
and Essex counties, in the county of Passiac, except
the townships of West-Midford, Pompton and Wayne,
and in the city of New Brunswick, were to be exempt
from taxation when held by any inhabitant, corporation or association residing or located in the counties
or cities enumerated, but were not to be exempt when
held by any inhabitant, corporation, or association residing or located in any other county or place in the
state.

In 1876 it was made lawful for the owners of lands situated in the counties of Hudson, Essex, Union, Bergen, and Passaic, and the cities of Trenton, New Brunswick, and Camden, to agree with the holders of any mortgage then in existence or thereafter made not to apply for any deduction from the taxable value of the lands given as security because of any mortgage (c. 121, sec. 1). In cases where agreements had been entered into and broken, the mortgage was to become due and payable and the amount which the mort-

gagee paid in taxes was to be added to the principal of the debt with interest (c. 121, sec. 2).

In the same year a general law was passed (Laws, 1876, c. 122) stating that no mortgage was to be assessed for taxation unless a deduction has been claimed by the owner of the land and allowed by the assessor. If the mortgage was separately assessed, it was to be taxed in the township or city where the mortgaged land was situated.

A similiar law, more definite and more carefully drawn, was passed in 1893, the main provisions of which were as follows: that no mortgage on real or personal property, or both, whether given by individuals or corporations, or the debt—secured by such mortgages, was to be assessed for taxation unless a deduction had been claimed by the owner of the mortgaged property and allowed by the assessor (c. 283). This law was repealed in 1903 (c. 209) and another law enacted (c. 208, sec. 10). The law as passed in 1903 was amended in 1904 and again in 1905 (Laws, 1904, c. 112, sec. 10; 1905, c. 161) and is now the present law of the state.

Constitution, 1844, art. 4, sec. 7, par. 12. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.

Present Law. Laws, 1903, c. 208, sec. 10, as amended by Laws, 1904, c. 112 and Laws, 1905, c. 161. No mortgage or debt secured by mortgage on real property which is taxed in the state is to be listed for taxation, and no deduction from the assessed value

of the real property is to be made by the assessor on account of any mortgage debt, but instead the mortgagor is entitled to credit on the interest payable on the mortgage for as much of the tax as is equal to the tax rate applied to the amount due on the mortgage. Exception is made to this rule where the parties have otherwise agreed, or where the mortgage is an investment of funds not subject to taxation, or where the parties have lawfully agreed that no deductions shall be made from the taxable value of the lands by reason of the mortgage. Mortgages and debts secured by mortgages on property exempt from taxation are also to be exempt.

New Mexico

Compiled Laws, 1897. Property under mortgage or lessor, unless it is listed by the mortgagee, or lessee (sec. 4022).

New York

History. In New York mortgages used to be taxed as personal property (Laws 1896, c. 908). In 1905 (c. 729) an annual tax of five mills was imposed on each dollar of the amount of the principal debt or obligation secured. After the necessary expenses were paid, the amount remaining was distributed equally between the county and the state. At the present time a recording tax of fifty cents on the one hundred dollars, or major fraction thereof, is levied. This law was passed in 1906 (c. 532) and amended in 1907 (c. 340).

Present Law. Laws, 1906, c. 532 and Laws, 1907, c. 340.

Laws, 1907, c. 340, sec. 290. Under the New York law the word mortgage is defined to include every mortgage on real property, mortgages where part of the security is personal or other property, executory contracts, and contracts or agreements by which the indebtedness secured is added to or increased.

Laws, 1907, c. 340, sec. 293—b. This definition does not include correction mortgages or mortgages in which additional security is given but the debt is not increased.

Laws, 1907, c. 340, sec. 293. The recording tax imposed amounts to fifty cents for each one hundred dollars, or major fraction of the principal debt or obligation secured. The exemptions of the minor fraction does not hold for mortgages of less than one hundred dollars, all mortgages no matter how small must pay a recording tax of at least fifty cents.

Laws, 1907, c. 340, sec. 293—a. As a rule holders of mortgages made prior to July 1, 1906, may pay the recording tax and have their mortgages exempt from the personal property tax which they would otherwise be subject to.

Laws, 1907, c. 340, sec. 293—c. Mortgages for indefinite amounts or for contract obligations are taxed as if equal in amount to the property given as security, unless the owner files with the recording officer a sworn statement of the maximum amount secured or which, under any contingency, may be secured by the mortgage. If this is done, the amount given in the sworn statement is taken as the basis for assessment.

Laws, 1906, c. 532, sec. 294. When any mortgage is recorded, a receipt showing that the tax has been paid is recorded with the instrument.

Laws, 1907, c. 340, sec. 295. No mortgage of real property which is subject to taxation is to be released, discharged of record or received in evidence in any action or proceeding, no assignment of or agreement extending any mortgage is to be recorded, and no mortgage is to be foreclosed unless the taxes have been paid as provided by law.

Laws, 1907, c. 340, sec. 296. Mortgages made by corporations in trust to secure the payment of bonds or obligations issued or to be issued thereafter, may contain a statement of the amount advanced, or accrued, or which is then secured by the mortgage; the tax payable on the recording of the mortgage is then computed on the basis of the amount stated to be secured. Whenever an additional amount is to be advanced under the original mortgage, a statement must be filed and the additional taxes paid.

Laws, 1907, c. 340, sec. 297. When the property given as security is located in more than one county, or partly within and partly without the state, the state board of tax commissioners determines the proportion of the tax that should go to each county or to the state of New York.

Laws, 1907, c. 340, sec. 298. The first of each month the recording officer of the county pays to the

given, if the deed or other instrument is considered merely as security (sec. 2734).

If any person required to list property fails to do so or only returns a portion of his taxable property, the county auditor must ascertain as near as practicable the true value of the property that ought to have been listed for a period not exceeding five years next preceding the year in which the inquiries and corrections were made. The amount for each year is multiplied by the tax rate for that year and the owner taxed for the whole amount (sec. 2781a). A penalty of fifty per cent was added for omitted property (sec. 2781). The court held that that part of the law was invalid but maintained that it could be disregarded without affecting the validity of the statute in other respects (Gager Treas. v. Prout, et al., 48 O. S. 89, 1891).

Oklahoma1

Constitution, 1907, art. 10, sec. 5. The power of taxation shall never be surrendered, suspended, or contracted away. Taxes shall be uniform upon the same class of subjects.

Oregon

History. In 1882 a law was passed (p. 64) providing that the mortgage and the mortgage debt were, for the purposes of assessment and taxation, to be treated as land or real property; both the mortgage and the debt were to be assessed and taxed to the mortgagee

^{1 1908} Laws not yet obtainable.

otherwise; and also all real and personal property, according to its true value in money.

Present Law. Laws, 1907, c. 258, secs. 14, 32. Mortgages are taxable as personal property.

North Dakota

Constitution, 1889, sec. 176. Laws shall be passed taxing by uniform rule all property according to its true value in money.

Present Law. Rev. Codes, 1905. Mortgages are taxable as personal property in North Dakota. Both real and personal property are taxable (sec. 1481) and credits are defined to include a!l claims and demands secured by deeds or mortgages, due or to become due (sec. 1480). The amount of credits is an item included in the list which the tax payer is required to make out (sec. 1496).

Ohio

Constitution, 1851, art. 12, sec. 2. Laws shall be passed taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money.

Present Law. Ann. St., 1906. Mortgages in Ohio are subject to taxation as personal property. Both real and personal property is taxable (sec. 2731) and tax payers are required to list all money loaned on pledge or mortgage of real estate, although a deed or other instrument may have been

gon 67, 1883) the court held that the state had power to tax a mortgage as such, in the county where recorded, irrespective of the residence of the owner of the mortgage, and that all law taxing mortgages owned by non-residents did not impair the obligation of contracts, whether the mortgage contracts were made before or after the passage of the law. The court maintained that the security could not be enforced in any other jurisdiction and that the question was wholly one of power, and, since the power of the state over the mortgage was as exclusive and complete as over the land mortgaged, the mortgage was subject to taxation by the state, unless there was a constitutional limitation to the contrary.

In the case of Savings and Loan Society v. Multnomah county (169 U. S. 421, 1898) the supreme
court of the United States held that the statute of
Oregon of 1882 taxing mortgages on land in that state
to the mortgagees in the counties where the land lay,
did not, as applied to mortgages owned by citizens of
other states and in their possession outside of the state
of Oregon, contravene the fourteenth amendment of
the constitution of the United States. The court further held that the result of the law was that nothing
was taxed but the real estate mortgaged, the interest
of the mortgagee therein being taxed to him, and the
rest to the mortgagor.

Constitution, 1859, art. 9, sec. 1. The legislative assembly shall provide by law for uniform and equrate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, (excepting such only as may be especially exempted by law).

Present Law. Laws, 1907, c. 268. In Oregon at the present time mortgages are taxable as personal property (sec. 1, 3).

Pennsylvania

Constitution, 1874, art. 9, sec. 1. All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Present Law. Dig. 1894, vol. 2, p. 1963. ff. sec. 1, 2. All personal property—mortgages are specifically mentioned—owned, held, or possessed, by any person or corporation, is taxable annually for state purposes at the rate of four mills on each dollar of its value.

sec. 3, 6. Tax payers are required to make a return under oath, showing the property held, owned, or possessed by them in their own right, or in any other capacity. If they refuse to make out this return properly verified by oath, the assessor must make it out from the information he is able to obtain, and after this list is revised and corrected by the county commissioners or board of revision, 50 per cent is added to form the aggregate amount for taxation.

sec. 8, 10. The register of deeds keeps a separate list containing detailed information relating to each mortgage recorded in his office, this list is filed each

month in the commissioner's office or with the board of revision of taxes. If the mortgagee resides in another county, a certified statement containing the information required for assessment is transmitted to the proper officers of the county where he does reside.

sec. 11, 12. The county commissioners, or board of revision of taxes, with the information in their possession, prepare statements and deliver them to the assessors showing the number and amount of mortgages held by each person within the different assessment districts of the county. With this list at hand, the assessor is able to compare and check up the returns made and sworn to by each person and corporation.

sec. 18, 19. The tax is collected and paid to the county and city treasurers, and they in turn pay it to the state treasurer. Three-fourths of the net amount collected from mortgages and other forms of personal property is returned to the counties for their own use.

sec. 26. It is unlawful for any person or corporation loaning money at interest to require the borrower to pay the taxes imposed by this act, and in all cases where the taxes are paid by the borrower, the law requires that such payments be deemed usury and punishable as such. This law was amended in 1899 (no. 39) and in 1905 (no. 134), but no material change was made.

Rhode Island

Constitution, 1842, art. 4, sec. 15. The general assembly shall, from time to time, provide for making new valuations of property for the assessment of taxes, in such manner as they deem best.

Present Law. Laws, 1905, c. 1246. In Rhode Island mortgages are taxable as personal property. Both real and personal property are taxable (sec. 2) and personal property for the purposes of taxation is deemed to include debts due from solvent persons (sec. 5).

South Carolina

Constitution, 1895, art. 10, sec. 1. The general assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe regulations to secure a just valuation for taxation of all property, real, personal and possessory.

Present Law. Code of Laws, 1902, vol. 1, sec. 260, 268, 271. In South Carolina mortgages are taxable as personal property.

South Dakota

Constitution, 1889, art. 11, sec. 2. All taxes to be raised in this state shall be uniform on all real and personal property, according to its value in money.

Present Law. Rev. Code, 1903. Mortgages are taxable as personal property. Credits are held to mean and include all claims and demands secured by deeds or mortgages due or to become due (sec. 2052), and all resident tax payers are required to list all moneys and credits, moneys loaned or invested (sec. 2058).

Tennessee

Constitution, 1870, art. 2, sec. 28. All property real, personal or mixed, shall be taxed. All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state.

Present Law. Laws, 1907, c. 602. Mortgages are included in the classification of all personal property liable to assessment (sec. 8, class 7). In a suit brought to collect any chose in action, if the defendant can prove that the holder did not give in such credit for taxation for the preceding year, the owner is to be taxed with all the court costs of the case (sec. 14).

Texas

Constitution, 1876, art. 8, sec. 1. Taxation shall be equal and uniform. All property in this state, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.

Present Law. Rev. St. 1897. Mortgages are taxable as personal property, and personal property for the purposes of taxation is deemed to include all moneys at interest due the person to be taxed over and above what he pays interest for, while the term "credits" means all demands secured by deed or mortgage (sec. 5063, 5064).

Utah

Constitution, 1895, art. 13, sec. 2. All property in the state, not exempt under the laws of the United States or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. (The word "property" includes money and credits.)

sec. 12. Nothing in this constitution shall be construed to prevent the legislature from providing a stamp tax or a tax based on income, occupation, licenses, franchises or mortgages.

Present Law. St. 1898, Laws, 1905. Mortgages are taxable as personal property. The assessor may require a statement of all solvent credits, secured or unsecured, from any person. He may deduct from the sum total of such credits only such debts secured or unsecured as may be owing by the person assessed (Laws, 1905, c. 125). The county recorders must transmit to the assessor of the county in which the mortgagee resides a complete abstract of all mortgages remaining unsatisfied on the records of his office, Statutes, (sec. 2531).

Vermont

Constitution, 1793, c. 1, art. 9. No part of any person's property can be justly taken from him, or applied to public uses, without his own consent, or that of the Representative Body of the freemen. Previous to any law being made to raise a tax, the purpose for which it is to be raised ought to appear evident to the

legislature to be of more service to the community than the money would be if not collected.

Present Law. St., 1906, sec. 504. Mortgages are taxable as personal property (sec. 559). The town clerk is required to prepare a statement of all mortgages, together with the amount secured, for the use of the listers.

Virginia

Constitution, 1902, art. 13, sec. 168. All property, except as herein provided, shall be taxed; all taxes whether state, local, or municipal, shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Present Law. Laws, Ex. Session, 1903, c. 148. It would seem that mortgages are taxable in two ways in Virginia. First, all bonds, notes, and other evidences of debt, whether secured by deed of trust, judgment or otherwise, are subject to a tax of twenty-five cents on every hundred dollars of value for the expenses of government, and a further tax of ten cents on every hundred dollars of the value for the support of the free public schools (sec. 8 and 9). Second, every contract relating to real estate or personal property, whether it be a deed or not, is subject to a tax of fifty cents when admitted to record. When the consideration exceeds three hundred, but does not exceed one thousand dollars, the tax is to be one dollar and where the consideration exceeds one

thousand dollars, an additional tax of ten cents on every one hundred or fraction, is levied. Deeds of trust and mortgages given by railroad and other internal improvement companies are subject to the same tax. In the case of railroads the amount of the mortgage indebtedness, subject to the rate as levied, depends upon the proportional number of miles of the line within and without the state (sec. 13).

Washington

Constitution, 1889, art. 7, sec. 1. All property in the state, not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law.

History. During the extraordinary session of the legislature held in 1901 (c. 2), a law was passed providing that mortgages and all credit for the purchase of real estate were not to be considered as property for the purposes of taxation. This law remained in force until the present law was enacted in 1907.

Present Law. Laws, 1907, c. 48. Under the present law all moneys and credits are exempt from taxation. The law states that all mortgages, notes, accounts, moneys, certificates of deposit, tax certificates, judgments, state, county, municipal, and school district bonds and warrants, are not to be considered as property for the purposes of taxation, and no deduction is to be allowed on account of an indebtedness owed.

West Virginia

Constitution, 1872, art. 10, sec. 1. Taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property, from which a tax may be collected, shall be taxed higher than any other species of property of equal value.

Present Law. Code, 1906. In West Virginia mortgages are taxable as personal property (sec. 747, 794). Debts may be deducted from credits (Laws, 1907, c. 80, sec. 67).

Wisconsin

Constitution, 1848, art. 8, sec. 1. The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe.

Present Law. Laws, 1903, c. 378. In Wisconsin, whenever any taxable real estate is subject to mortgage, the mortgage is deemed an interest in the real estate and assessed and taxed in the assessment district where the real estate is located. The interests of the mortgagor and mortgagee may be separately assessed, or at the option of the mortgagor, both may be assessed and taxed together. If separately assessed, the interest of the mortgagor is to be taken for only such amount as remains after deducting the assessed value of the interest of the mortgagee from the assessed value of the entire real estate, and the valuation of the interest of the mortgagee is to be accord-

ing to the true value, but not to exceed the just valuation which should be placed upon the mortgaged real estate if unencumbered. If both interests are assessed together without separate valuation, they are assessed to the mortgagor or occupant, the same as unencumbered real estate, and the combined valuation of both interests is not to exceed the just valuation which should be placed upon the real estate, if unencumbered.

The deduction of debts from credits is not allowed in the case of any mortgage required to be assessed as an interest in real estate.

The law does not apply to mortgages held by insurance companies or other persons or associations exempt from taxation nor to mortgages on property assessed by a state board of assessment, nor to mortgages upon property of persons, associations, or corporations taxed by license fee or other special method. The law applies only to mortgages upon property subject to direct assessment and taxation under the general assessment and tax laws of the state.

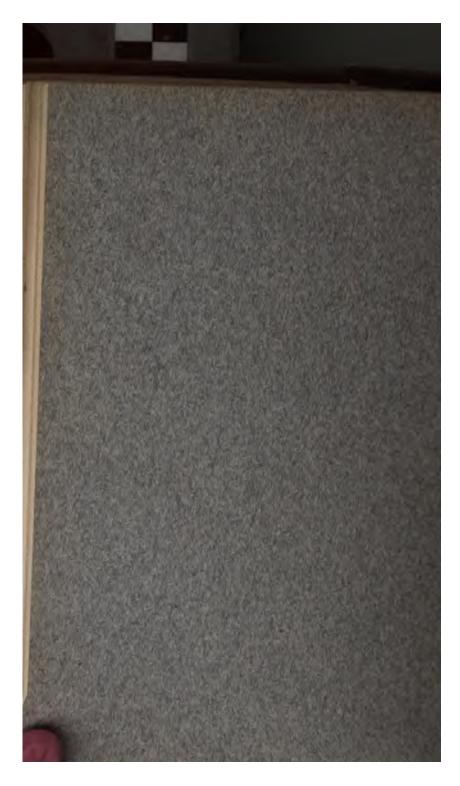
Wyoming

Constitution, 1889, art. 15, sec. 11. All property, except as in this constitution otherwise provided, shall be uniformly assessed for taxation, and the legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.

sec. 12. (Certain property is definitely exempt from taxation, and in addition, such other property may be exempt as the legislature may provide by general law.)

Present Law. St. 1899. Mortgages are taxable as personal property in Wyoming (sec. 1763, 1775).





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MUNICIPAL HOME RULE CHARTERS

MARGARET A. SCHAFFNER

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MUNICIPAL HOME RULE CHARTERS

MARGARET A. SCHAFFNER

COMPARATIVE LEGISLATION BULLETIN—NO 18—OCTOBER, 1908.

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C INTS

	Tanke.
MOVEMENT	5
	5
S	5
***************	6
ne Rule Privileges	7
icipal Functions	7
	7
	5
CISIONS	10
	10
	11
R-MAKING	35
king	35
rd	36
	36
	37
	37
	ne Rule Privileges icipal Functions CISIONS CR-MAKING king



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SCOPE OF HOME RULE MOVEMENT'

The home rule movement in the United States has been advanced 1st, through constitutional provisions; 2nd, through legislative enactments.

The dependence of the municipality upon the will of the legislature has been lessened in a number of states through legislation granting increased power to municipalities over local affairs. But this method of extending municipal power and responsibility nevertheless leaves the source of power in the legislature and what has been granted at one session may be taken away at the next.

The method of securing home rule through constitutional provisions empowering the municipality to frame its own charter, places the local government beyond the interference of the legislature in matters which are purely municipal and thus secures a more permanent basis for local self government.

HISTORY

Constitutional Provisions

Municipal home rule has been secured through con-

¹The present inquiry is limited to the question of home rule charters secured through constitutional provisions.

stitutional provisions in California, Colorado, Minnesota, Missouri, Oklahoma, Oregon and Washington.

See Cal. Const. 1879, art. 11, sec. 6, as amended in 1896; sec. 8, as amended in 1887, 1890, 1892, 1902 and 1906; and sec. 8½ amendment of 1896; Col. Const. art. 20, amendment of 1902; Minn. Const. art. 4, sec. 36, amendment of 1896 as amended in 1898: Mo. Const. 1875, art. 9, secs. 16 and 17 and secs. 20–25, as amended in 1902: Okla. Const. 1907, art. 18, sec. 3 (a) and sec. 3 (b): Ore. Const. art. 11, sec. 2, as amended in 1906; and Washington, Const. 1889, art. 11, sec. 10.

Beginning with the first constitutional provisions of Missouri in 1875 the home rule movement gradually extended to California in 1879, Washington in 1889, Minnesota in 1896, Colorado in 1902, Oregon in 1906, Oklahoma in 1907 and at the present time the proposition of municipal home rule is before the people of Michigan in the proposed constitution to be voted upon in November, 1908.

Legislation

Three general classes of legislation have been enacted under the constitutional provisions for home rule: 1st, legislation giving effect to the provisions where not self executing; 2nd, legislation to supplement the home rule system; and 3rd, the ratification of home rule charters where the legislature is given the veto power.

Enabling acts. Legislation to give effect to the home rule provisions is required in Minn. (Const. art. 4, sec. 36) and in Wash, (Const. art. 11, sec. 10).

Wash. (Const. art. 11, sec. 10).

For enabling acts, see Minn. Laws, 1897, c. 255; Laws, 1899, c. 351; and Wash. Ballinger's Ann. Codes and St. 1897, secs.

734-742.

General laws. The home rule systems of Washington and of Minnesota both reserve the right of the legislature to enact

MUNICIPAL HOME RULE CHARTERS

general laws relating to municipal affairs, and such laws are paramount to the provisions of the local charters.

See State v. Carson, 1893, 6 Wash. 250, and the reservation

in the Minn. Const. art. 4, sec. 36.

Legislative veto. In California the proposed charter must be submitted to the legislature for its "approval or rejection as a whole without power of alteration or amendment," but no home rule charter has ever been refused ratification by the legislature. See Cal. Const. art. 11, sec. S.

CLASSES OF CITIES HAVING HOME RULE PRIVILEGES

The requirements for home rule privileges vary under the several constitutional provisions. Missouri requires a population of more than 100,000; Washington, 20,000; California, 3,500; and Oklahoma, 2,000. Colorado extends the privilege to any city of the 1st and 2nd class. In Minnesota any city, or village which is to become thereby a city, "may frame a charter for its own government." Oregon includes "every city or town," and the proposed constitution for Michigan provides for home rule for "each city and village."

SEPARATION OF STATE AND MUNICIPAL FUNCTIONS

The question of "home rule" involves the separation of "municipal affairs" from "state functions." What is the sphere of the state and what is the sphere of the municipality?

State functions

It has been generally established by judicial decisions that the general laws of the state are supreme in "state matters" and that municipal charter provisions.

are superseded by the state law in all matters pertaining to general police administration, the administration of justice, the conduct of elections, the administration of education, the fixing of city boundaries, and the limitation of municipal indebtedness.

For typical decisions compare, State ex rel. v. Police Commissioners of Kansas City, 1904, 184 Mo. 109, (Police); Miner v. Justices Court, 1898, 121 Cal. 264 (Justice); Fragley v. Phelan, 1899, 126 Cal. 383 (Elections); Kennedy v. Miller, 1893, 97 Cal. 429 (Education); State v. Warner, 1892, 4 Wash. 773 (Boundaries); and Beck v. St. Paul, 1902, 87 Minn. 381 (Municipal indebtedness).

Municipal affairs

Some difference of opinion prevails in the decisions as to what is included under the term "municipal affairs" but the general tendency seems to leave matters of purely local interest to the municipalities.

Missouri and California have gone farther than any of the other states in granting local autonomy, while Minnesota and Washington have left more opportunity for the interference of the legislature.

The general attitude of the courts is well expressed in a recent decision in California which declares that whatever conflict may be found in the opinions of the court as to the precise meaning of the term "municipal affairs" it has always been conceded by all of the justices that the object of the home rule amendment was to secure to the municipality that adopted a charter for its own government, the maintenance of its charter provisions in municipal matters and to deprive the legislature of the power by laws general in form

to interfere in the government and management of the municipality. Ex parte Braun, 1903, 141 Cal. 204.

For similar decisions compare Fragley v. Phelan, 1899, 126. Cal. 383; Graham v. City of Fresno, 1907, 151 Cal. 465; Rothschild v. Bantel (Cal.), 1907, 91 Pac. 803; Dinan v. Superior Court of City and County of San Francisco (Cal.), 1907, 91 Pac. 806; People v. Johnson, 1905, 34 Col. 143; State ex rel. v. District Court of St. Louis County, 1903, 90 Minn. 457; Grant v. Berrisford, 1904, 94 Minn. 45; Peterson v. City of Red Wing, 1907, 101 Minn. 62; Turner v. Snyder, 1907, 101 Minn. 481; Ewing v. Hoblitzelle, 1885, 15 Mo. App. 441; Kansas City ex rel. North Park District v. Scarritt, 1895, 127 Mo. 642; Kansas City v. Marsh Oil Co., 1897, 140 Mo. 458; Acme Dairy Co. v. City of Astoria, 1907 (Ore.), 90 Pac. 153.



CONT INTS

		Page.
SCOPE OF THE HOME RU M	OVEMENT	- 5
History		5
Constitutional Provision s		5
Legislation		6
Classes of Cities Having Home	Rule Privileges	- 7
Separation of State and Munici	pal Functions	7
State Functions		;
Municipal Affairs		`
LAWS AND JUDICIAL DECISION	NS	10
Foreign Countries		10
United States		11
PROCEDURE IN CHARTER-MA	KING	:::5
Initiation of Charter-making		::.5
Sejection of Charter Board		36
Constitution of Board		130
Ratification of Charter		:::
Charter Amersiments		:::

American theory as recently developed, concedes to the municipality only such powers as have been specifically granted, and in the absence of constitutional restrictions the municipality is subject to the will of the legislature.3

In recent years England has applied the continental principle of local autonomy in municipal government and has extended central administrative control over matters of general governmental concern.4

United States

California. Const. 1879, art. 11, sec. 6, as amend. in 1896. Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed. Cities and towns heretofore organized or incorporated may become organized under such general laws whenever a majority of

³ The supreme court of Michigan developed the doctrine that back of constitutional provisions lie certain inherent powers of local self-government, that "local self-government is a matter of absolute right and the state cannot take it away." but later decisions in Michigan somewhat modified the earlier position.

what modified the earlier position.

Compare the decisions in: People v. Hurlbut. 1871. 24 Mich. 44: People v. Common Council of Detroit. 1873. 28 Mich. 228: Park Commissioners v. the Mayor, etc., 1874. 29 Mich. 343; Allor v. Wayne. 1880. 43 Mich. 76: Robertson v. Baxter. 1885. 57 Mich. 127; Attorney General v. Detroit. 1885. 58 Mich. 213; Wilcox v. Paddock. 1887. 65 Mich. 23: Board of Met. Police v. Board of Auditors, 1888. 68 Mich. 576.

For cases in other states which take a similar position see: People v. Albertson. 1873. 55 N. Y. 50: People v. Lynch. 1875. 51 Cal. 15: People v. Porter. 1882. 90 N. Y. 68: State v. Denney. 1888. 118 Ind. 382: City of Evansville v. State. 1888. 118 Ind. 426; Rathbone v. Wirth. 1896. 150 N. Y. 459: State ex rel. Attorney General v. Moores. 1898. 55 Neb. 480.

⁴See especially the provisions of the Municipal Corporations (Consolidation) Act of 1882.

the electors voting at a general election shall so determine, and shall organize in corformity therewith; and cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this constitution, except in municipal affairs, shall be subject to and controlled by general laws.

Const. 1879, art. 11, sec. 8, as amend, in 1887, 1890, 1892, 1902 and 1906. Any city containing a population of more than 3,500 inhabitants may frame a charter for its own government, consistent with and subject to the constitution, (or, having framed such a charter, may frame a new one), by causing a board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of said city at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such board, or a majority of them, and returned, one copy to the mayor thereof, or other chief executive officer of such city, and the other to the recorder of the county. Such proposed charter shall then be published in two daily newspapers of general circulation in such city, for at least twenty days, and the first publication shall be made within twenty days after the completion of the charter; provided, that in cities containing a population of not more than 10,000 inhabitants, such proposed charter shall be published in one such daily newspaper; and within thirty days after such publication it shall be submitted

to the qualified electors of said city at a general or special election, and if a majority of such qualified electors voting thereon shall ratify the same, it shall thereafter be submitted to the legislature for its approval or rejection as a whole, without power of alteration or amendment. Such approval may be made by concurrent resolution, and if approved by a majority vote of the members elected to each house, it shall become the charter of such city, or, if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof, and supersede any existing charter, (whether framed under the provisions of this section of the constitution or not) and all amendments thereof, and all laws inconsistent with such charter. A copy of such charter certified by the mayor, or chief executive officer, and. authenticated by the seal of such city, setting forth: the submission of such charter to the electors and itsratification by them, shall after the approval of such: charter by the legislature, be made in duplicate and deposited, one in the office of the secretary of state, and the other, after being recorded in said recorder's office shall be deposited in the archives of the city, and thereafter all courts shall take judicial notice of said charter. The charter, so ratified, may be amended at intervals of not less than two years by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof at a general or special election, held at least thirty days after the publication of such proposals for twenty days in a daily

newspaper of general circulation in such city, and ratified by a majority of the electors voting thereon and approved by the legislature as herein provided for the approval of the charter. Whenever 15 per cent of the qualified voters of the city shall petition the legislative authority thereof to submit any proposed amendment or amendments to said charter to the qualified voters thereof for approval, the legislative authority thereof must submit the same. In submitting any such charter, or amendments thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

Const. (Amend. 1896), art. 11, sec. 8½. It shall be competent, in all charters framed under the authority given by section eight of article eleven of this constitution, to provide, in addition to those provisions allowable by this constitution and by the laws of the state, as follows:

- For the constitution, regulation, government, and jurisdiction of police courts, and for the manner in which, the times at which, and the terms for which the judges of such courts shall be elected or appointed, and for the compensation of said judges and of their clerks and attachés.
- 2. For the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, and the number which shall constitute any one of such boards.
 - 3. For the manner in which, the times at which, and



MUNICIPAL HOME RULE CHARTERS

15

the terms for which the members of the boards of police commissioners shall be elected or appointed; and for the constitution, regulation, compensation, and government of such boards and the municipal police

force.

4. For the manner in which, the times at which, and the terms for which the members of all boards of election shall be elected or appointed, and for the constitution, regulation, compensation, and government of such boards, and of their clerks and attachés; and for all expenses incident to the holding of any election.

Where a city and county government has been merged and consolidated into one municipal government, it shall also be competent in any charter framed under said section eight of said article eleven, to provide for the manner in which, the times at which, and the terms for which the several county officers shall be elected or appointed, for their compensation, and for the number of deputies that each shall have, and for the compensation payable to each of such deputies.

The constitutional provisions relating to freeholders' charters were intended to give municipalities the sole right to regulate, control, and govern their internal conduct independent of the general laws; and this internal regulation and control by municipalities comprise those "municipal affairs' spoken of in the constitution. If the charter is silent a general act upon the subject will govern as if it were a charter provision. Fragley v. Phelan, 1899, 126 Cal. 383.

The provisions of freeholders' charters are supreme as to all matters which the constitution authorizes to be provided for therein, and are exempt from any subsequent legislative interference. Graham v. Mayor of Fresno, 1907, 151 Cal. 465.

interference. Graham v. Mayor of Fresno, 1907, 151 Cal. 465.
Also see Rothchild v. Bantel, 1907, 91 Pac. 803; Dinan v. Superior Court of City and County of San Francisco, 1907, 91 Pac: 806, and older cases cited in these decisions, especially Ex parte Braun, 1903, 141 Cal. 204.

Colorado. Const. (Amend. 1902) art. 20, sec. 4. Makes provisions for a charter convention to frame the first home rule charter for the city and county of Denver.

Const. (Amend. 1902) art. 20, sec. 5. The citizens of the city and county of Denver shall have the exclusive power to amend their charter or to adopt a new charter, or to adopt any measure as herein provided.

It shall be competent for qualified electors, in number not less than five per cent, of the next preceding gubernatorial vote in said city and county to petition the council for any measure, or charter amendment, or for a charter convention. The council shall submit the same to a vote of the qualified electors at the next general election, not he'd within thirty days after such petition is filed; whenever such petition is signed by qualified electors in number not less than ten per cent, of the next preceding gubernatorial vote in said city and county, with a request for a special election, to be held not less than thirty days nor more than sixty days from the date of filing the petition; Provided, That any question so submitted at a special election shall not again be submitted at a special election within two years thereafter.

In submitting any such charter, charter amendment or measure, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. Whenever the question of a charter convention is carried by a majority of those voting thereon, a charter convention shall be called through a special election ordinance as provided in section four (4) hereof, and the same shall be constituted and held and the proposed charter submitted to a vote of the qualified electors, approved or rejected, and all expenses paid, as in said section provided.

The clerk of the city and county shall publish, with his official certification, for three times, a week apart, in the official newspaper, the first publication to be with his call for the election, general or special, the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition which is to be submitted to the voters. Within ten days following the vote the said clerk shall publish once in said newspaper the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which shall have been approved by a majority of those voting thereon, and he shall file with the secretary of state two copies thereof (with the vote for and against) officially certified by him, and the same shall go into effect from the date of such filing. He shall also certifiy to the secretary of state, with the vote for and against, two copies of every defeated alternative article or proposition, charter, charter amendment, measure or proposal for a charter convention. Each charter shall also provide for a reference, upon proper petition therefor, of measures passed by the council to a vote of the qualified electors, and for the initiative by the qualified electors of such ordinances as they may by petition request.

The signatures to petitions in this amendment mentioned need not all be on one paper. Nothing herein or e'sewhere shall prevent the council, if it sees fit, from adopting automatic vote registers for use at elections and references.

No charter, charter amendment, or measure adopted or defeated under the provisions of this amendment shall be amended, repealed or revived, except by petition and electoral vote. And no such charter, charter amendment or measure shall diminish the tax rate for state puproses fixed by act of the general assembly, or interfere in any wise with the collection of state taxes.

Const. (Amend. 1902) art. 20, sec. 6. Cities of the first and second c'ass in this state are hereby empowered to propose for submission to a vote of the qualified electors, proposals for charter conventions and to hold the same, and to amend any such charter, with the same force and in the same manner and have the same power, as near as may be, as set out in sections four (4) and five (5) hereof, with full power as to real and personal property and public utilities, works or ways, as set out in section one (1) of this amendment.

The proposed amendment (art. 20,) is not repugnant to sec. 4, of the enabling act (approved March 3, 1875; 18 U. S. Stat. at L. 474) which requires the constitution to be republican in form and is not repugnant to the constitution of the United States. People v Sours, 1903, 31 Col. 369.

See also Parsons v. People, 1904, 32 Col. 221 (especially p. 240)

The authority of the charter convention to legislate under art. 20 of the Const. was limited to matters of purely local and municipal concern. People v Johnson, 1905, 34 Col. 143.

Mills Ann. St., Rev. Supp. 1891–1905, sec. 4502w. Refers to construction of art. 20 of the Const.

Michigan. (Proposed constitution to be submitted to the people in Nov. 1908), art. 8, sec. 20. The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; . . .

sec. 21. Under such general laws, the electors of each city and village shall have power and authority to frame, adopt, and amend its charter, and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general 'aws of this state.

Minnesota. Const. (Amend. 1896) art. 4, sec. 36, as amended in 1898. Any city or vil age in this State may frame a charter for its own government as a city consistent with and subject to the laws of this State, as follows: The legislature shall provide, under such restrictions as it deems proper, for a board of fifteen freeholders, who shall be and for the past five years shall have been qualified voters thereof, to be appointed by the district judges of the judicial district in which the city or village is situated, as the legislature may determine, for a term in no event to exceed six years which board shall, within six months after its appointment, return to the chief magistrate of said city or village a draft of said charter, signed

by the members of said board, or a majority thereof. Such charter shall be submitted to the qualified voters of such city or village at the next election thereafter, and if four-sevenths of the qualified voters, voting at such election shall ratify the same it shall, at the end of thirty days thereafter, become the charter of such city or village as a city, and supersede any existing charter and amendments thereof; provided, that in cities having patrol limits now established, such charter shall require a three-fourths majority vote of the qualified voters voting at such election to change the patrol limits now established.

Before any city shall incorporate under this act the legislature shall prescribe by law the general limits within which such charter shall be framed. Duplicate certificates shall be made setting forth the charter proposed and its ratification, which shall be signed by the chief magistrate of said city or village and authenticated by its corporate seal. One of said certificates shall be deposited in the office of secretary of state, and the other, after being recorded in the office of the register of deeds for the county in which such city or village lies, shall be deposited among the archives of such city or village, and all courts shall take judicial notice thereof. Such charter so deposited may be amended by proposal therefor made by a board of fifteen commissioners aforesaid, published for at least thirty days in three newspapers of general circulation in such city or village, and accepted by three-fifths of the qualified voters of such city or village voting at

the next election, and not otherwise; but such charter shall always be in harmony with and subject to the Constitution and laws of the State of Minnesota. The legislature may prescribe the duties of the commission relative to submitting amendments of charter to the vote of the people and shall provide that upon application of five per cent of the legal voters of any such city or village, by written petition, such commission shall submit to the vote of the people, proposed amendments to such charter set forth in said petition. board of freeholders above provided for shall be permanent, and all the vacancies by death, disability to perform duties, resignation or removal from the corporate limits, or expiration of term of office shall be filled by appointment in the same manner as the original board was created, and said board shall a ways contain its full complement of members.

It shall be a feature of all such charters that there shall be provided, among other things, for a mayor or chief magistrate, and a legislative body of either one or two houses; if of two houses, at least one of them shall be elected by general vote of the electors.

In submitting any such charter or amendment thereto to the qualified voters of such city or village, any alternate section or article may be presented for the choice of the voters, and may be voted on separately without prejudice to other articles or sections of the charter or any amendments thereto.

The legislature may provide general laws relating to affairs of cities, the application of which may be limited to cities of over fifty thousand inhabitants, or to cities of fifty and not less than twenty thousand inhabitants, or to cities of twenty and not less than ten thousand inhabitants, or to cities of ten thousand inhabitants or less, which shall apply equally to all such cities of either class, and which shall be paramount while in force to the provisions relating to the same matter included in the local charter herein provided for. But no local charter, provision or ordinance passed thereunder shall supersede any general law of the State defining or punishing crimes or misdemeanors.

Rev. Laws, 1905, secs. 746-758, and Laws, 1907, c. 17, c. 199, c. 216, c. 373, and c. 375. Provision is made for carrying the constitutional amendment into effect and definite limits are prescribed within which cities may frame their own charters. Limitations are placed on bonded indebtedness, and safeguards are provided in the granting of franchises. Successive four year tenures are prescribed for the charter boards. Otherwise the legislative enactments largely repeat the provisions of the constitutional amendment.

The provisions of Const. art. 4, sec. 36, requiring the legislature to prescribe limits within which cities may frame their own charters, is sufficiently complied with when the legislature prescribes and imposes such general restrictions of the city's powers as are deemed by that body expedient and proper; and it is not necessary that the legislature prescribe a general framework for the city charter. State ex rel. v. O'Connor, 1900, 81 Minn. 79.

The constitutional amendment of 1898 (sec. 36, art. 1) providing for the submission of new charters or amendments to the voters of the localities interested, for ratification, is essentially republican, and is not in violation of art. 4, sec. 4, of the federal constitution. Hopkins v. City of Duluth, 1900, 81

Minn. 189.

The various provisions of a municipal charter, adopted under the constitution authorizing cities to frame their own charters, as to subjects properly belonging to the government of municipalities, have all the force and effect of legislative enactments. State ex rel. Freeman v. Zimmerman, 1902, 86 Minn, 353.

The power and authority conferred by the Constitution upon cities to frame their own charters extends to and embraces any subject appropriate to the orderly conduct of municipal affairs. State ex rel. v. District Court of St. Louis County,

1903, 90 Minn. 457.

The charter of any city incorporated under Const. art. 4, sec. 36, allowing cities to frame their charters and providing that such charter shall be in harmony with the constitution and laws of Minnesota must comply with the public policy of the state, but on any subject appropriate to the orderly conduct of municipal affairs it may differ in detail from those of existing laws. Grant v. Berrisford, 1904, 94 Minn. 45.

Followed in Peterson v. City of Red Wing, 1907, 101 Minn.

62.

Unless otherwise expressly provided, the provisions of a "home rule charter", if subject to municipal regulation, supersede the general laws with reference to the same subject-matter. Turner v. Snyder, 1907, 101 Minn. 481.

Missouri. Const. 1875 art. 9, sec. 16. Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a board of thirteen freeholders, who shall have been for at least five years qualified voters thereof, to be elected by the qualified voters of such city at any general or special election; which board shall, within ninety days after such election, return to the chief magistrate of such city a draft of such charter, signed by the members of such board or a majority of them. Within thirty days thereafter, such proposed charter shall be submitted to the qualified voters of such city, at a gen-





charter of such city, and amendments their be made, setting forth fication, which shall 1 of such city and aut One of such certifical fice of the secretary of recorded in the office county in which such c the archives of such judicial notice thereof. be amended by a prope making authorities of s thirty days in three nev in such city, one of whic in the German language of the qualified voters of eral or special election, charter shall always be i to the Constitution and 1.

The provision of sec. 16

The power conferred by art. 9, sec. 16 is continuing so that a city to which the section applies does not exhaust its constitutional grant after once adopting a charter thereunder. Morrow v. Kansas City, 1905, 186 Mo. 675.

Const. 1875 art. 9, sec. 17. It shall be a feature of all such charters that they shall provide, among other things, for a mayor or chief magistrate, and two houses of legislation, one of which at least shall be elected by general ticket; and in submitting any such charter or amendment thereto to the qualified voters of such city, any alternative section or article may be presented for the choice of the voters, and may be voted on separately, and accepted or rejected separately, without prejudice to other articles or sections of the charter or any amendment thereto.

Const. 1875, art. 9, secs, 20-5, as amended in 1902. Provisions for home rule charter for St. Louis.

sec. 20. The city of St. Louis may extend its limits so as to embrace the parks now without its boundaries, and other convenient and contiguous territory, and frame a charter for the governemnt of the city thus enlarged, upon the following condition, that is to say: The council of the city and county court of the county of St. Louis shall, at the request of the mayor of the city of St. Louis, meet in joint session and order an election, to be held as provided for general elections, by the qualified voters of the city and county, of a board of thirteen freeholders of such city or county, whose duty shall be to propose a scheme for the enlargement and definition of the boundaries of the city, the reorganization of the government of the county,

the adjustment of the relations between the city thus enlarged and the residue of St. Louis county, and the government of the city thus enlarged, by a charter in harmony with and subject to the constitution and laws of Missouri, which shall, among other things, provide for a chief executive and two houses of legislation, one of which shall be elected by general ticket, which scheme and charter shall be signed in duplicate by said board or a majority of them and one of them returned to the mayor of the city and the other to the presiding justice of the county court within ninety days after the election of such board. Within thirty days thereafter the city council and county court shall submit such scheme to the qualified voters of the whole county and such charter to the qualified voters of the city so enlarged, at an election to be held not less than twenty nor more than thirty days after the order therefor; and if a majority of such qualified voters, voting at such election, shall ratify such scheme and charter, then such scheme shall become the organic law of the county and city, and such charter the organic law of the city, and at the end of sixty days thereafter shall take the place of and supersede the charter of St. Louis, and all amendments thereof, and all special laws relating to St. Louis county inconsistent with such scheme.

The constitutional provision (art. 9, sec. 20) that laws passed under the authority of the charter must be in harmony with the constitution and laws of the state is not to be understood as prescribing that there must be an exact coincidence in all possible points of comparison. The meaning is that no regulation established by the charter or made by its authority



MUNICIPAL HOME RULE CHARTERS

shall do violence either to the declared laws or to the policy or manifest governmental purposes of the state, as shown by the constitution and statues. In re Dunn, 1880, 9 Mo. App. 255

sec. 21. A copy of such scheme and charter, with a certificate thereto appended, signed by the mayor and authenticated by the seal of the city, and also signed by the presiding justice of the county court and authenticated by the seal of the county, setting forth the submission of such scheme and charter to the qualified voters of such county and city, and its ratification by them shall be made in duplicate, one of which shall be deposited in the office of the secretary of state, and the other, after being recorded in the office of the recorder of deeds of St. Louis county, shall be deposited among the archives of the city, and thereafter all-courts shall take judicial notice thereof.

sec. 22, as amended in 1902. The charter so ratified may be amended by proposals therefor submitted by the lawmaking authorities of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals and accepted by three-fifths of the qualified voters voting for or against each of said amendments so submitted; and the lawmaking authorities of such city may order an election by the qualified voters of the city of a board of thirteen freeholders of such city to prepare a new charter for such city, which said charter shall be in harmony with and subject to the constitution and laws of the state, and shall provide, among other things, for a chief executive and at

least one house of legislation to be elected by a general ticket. Said revised charter shall be submitted to the qualified voters of such city at an election to be held not less than twenty nor more than thirty days after the order therefor, and if a majority of such qualified voters voting at such election ratify such charter, then said charter shall become the organic law of such city, and sixty days thereafter shall take effect and supersede the charter of such city and all special laws inconsistent therewith.

sec. 23. Such charter and amendments shall a'ways be in harmony with and subject to the constitution and laws of Missouri, except only that provision may be made for the graduation of the rate of taxation for city purposes in the portions of the city which are added thereto by the proposed enlargement of its boundaries. In the adjustment of the relations between city and county, the city shall take upon itself the entire park tax; and in consideration of the city becoming the proprietor of all the county buildings and property within its enlarged limits, it shall assume the whole of the existing county debt, and thereafter the city and county of St. Louis shall be independent of each other. The city shall be exempted from all county taxation. The judges of the county court shall be elected by the qualified voters outside of the city. The city, as enlarged shall be entitled to the same representation in the general assembly, collect the state revenue and perform all other functions in relation to the state, in the same manner, as if it were a county

as in this constitution defined; and the residue of the county shall remain a legal county of the state of Missouri, under the name of the county of St. Louis. Until the next apportionment for senators and representatives in the general assembly, the city shall have six senators and fifteen representatives, and the county one senator and two representatives, the same being the number of senators and representatives to which the county of St. Louis, as now organized is entitled under sections eight and eleven of article 4 of this constitution.

Secs. 20-25 of art. 9, of the Constitution conferred on the city of St. Louis the power to regulate its own affairs without interference from the state legislature except in cases expressly intrusted to the legislature by some constitutional exception. Ewing v. Hoblitzelle, 1885, 15 Mo. App. 441.

Oklahoma. Const. 1907, art. 18, sec. 3 (a). Any city containing a population of more than 2,000 inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of this state, by causing a board of free-holders, composed of two from each ward, who shall be qualified electors of said city, to be elected by the qualified electors of said city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such board or a majority of them, and returned, one copy of said charter, to the chief executive officer of said city, and the other to the register of deeds of the county in which said city shall

be situated. Such proposed charter shall then be published in one or more newspapers published and of general circulation within said city, for at least twentyone days, if in a daily paper, or in three consecutive issues, if in a weekly paper, and the first publication shall be made within twenty days after the completion of the charter; and within thirty days, and not earlier than twenty days after such publication, it shall be submitted to the qualified electors of said city at a general or special election, and if a majority of such qualified electors voting thereon shall ratify the same, it shall thereafter be submitted to the governor for his approval, and the governor shall approve the same if it shall not be in conflict with the constitution and laws of this state. Upon such approval it shall become the organic law of such city and supersede any existing charter and all amendments thereof and all ordinances inconsistent with it. A copy of such charter, certified by the chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them shall, after the approval of such charter by the governor, be made in duplicate and deposited, one in the office of the secretary of state and the other. after being recorded in the office of said register of deeds, shall be deposited in the archives of the city: and thereafter all courts shall take judicial notice of said charter. The charter so ratified may be amended by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof

(or by petition as hereinafter provided) at a general or special eleciton, and ratified by a majority of the qualified electors voting thereon, and approved by the governor as herein provided for the approval of the charter.

sec. 3 (b). An election of such board of freeholders may be called at any time by the legislative authority of any such city and such election sha'l be called by the chief executive officer of any such city within 10 days after there shall have been filed with him a petition demanding the same, signed by a number of qualified electors residing within such city, equal to 25 percentum of the total number of votes cast at the next preceding general municipal election; and such election shall be held not later than 30 days after the call therefor. At such election a vote shall be taken upon the question of whether or not further proceedings toward adopting a charter shall be had m pursuance to the call, and unless a majority of the qualified electors voting thereon shall vote to proceed further, no further proceedings shall be had, and all proceedings up to that time shall be of no effect.

Oregon. Const. art. 11, sec. 2, as amended in 1906. Corporations may be formed under general laws, but shall not be created by the legislative assembly by special laws. The legislative assembly shall not enact, amend, or repeal any charter or act of corporation for any municipality, city, or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the

constitution and criminal laws of the state of Oregon. (Proposed by initiative petition and adopted, June 4, 1906.)

Const. art. 11, sec. 2, as amended June 4, 1906, expressly deprives the legislative assembly of all authority to enact, amend or repeal any charter of a city or town the legal voters of which have reserved to themselves the exercise of such power, except the right of appeal. Acme Dairy Co. v. City of

Astoria, 1907, 90 Pac. (Ore.) 153.

Const. art. 11, sec. 2, as amended June 4, 1906, prohibits the legislature from amending the charter of cities and towns, the right of which is reserved to the voters thereof, and art. 4, as amended June 4, 1906, by section 1a, provides that the referendum may be demanded by the people, which power is re-served to the legal voters of every municipality and district, as to all local, special, and municipal legislation of every kind in and for their respective municipalities and districts; that the manner of excercising such power shall be prescribed by the general laws, except that the cities and towns may provide for the manner of exercising such powers as to their municipal legislation. Held, that the initiative and referendum power so conferred on municipalities was not limited to the enacting or repealing of ordinances but extended to the amendment of the charter. Acme Dairy Co. v. City of Astoria, 1907, 90 Pac. (Ore.) 153.

Washington. Const. 1889, art. 11, sec. 10. . . Any city containing a population of twenty thousand inhabitants, or more, shall be permitted to frame a charter for its own government, consistent with and subject to the constitution and laws of this state, and or such purpose the legislative authority of such city may cause an election to be had, at which election there shall be chosen by the qualified electors of said city. fifteen freeholders thereof who shall have been residents of said city for a period of at least two years preceding their election and qualified voters, whose duty it shall be to convene within ten days after their election and prepare and propose a charter for such city. Such proposed charter shall be submitted to the

qualified electors of said city, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said city, and shall become the organic law thereof, and supersede any existing charter, including amendments thereto, and all special laws inconsistent with such charter. Said proposed charter shall be published in two daily newspapers published in said city, for at least thirty days prior to the day of submitting the same to the electors for their approval, as above provided. All elections in this section authorized shall only be had upon notice, which notice shall specify the object of calling such election, and shall be given for at least ten days before the day of election, in all election districts of said city. Said elections may be general or special elections, and except as herein provided, shall be governed by the law regulating and controlling general or special elections in said city. Such charter may be amended by proposals therefor submitted by the legislative authority of such city to the electors thereof at any general election after notice of said submission, published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter or amendment thereto, any alternate article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others

General laws cannot be affected by the adoption of a municipal freeholders' charter but are binding upon the corporation. State v. Carson, 1893, 6 Wash. 250.

The right of a city of the first class to make a new charter is included within the constitutional grant of power to frame

a charter and the mode pointed out in art. 11, sec. 10, of the constitution for submitting proposed amendments to a vote of the people should not be construed as exclusive of every other method. Reeves v. Anderson, 1895, 13 Wash. 17.

Ballinger's Ann. Codes and St. 1897, secs. 734-742. Enumerates the powers of cities having 20,000 population or more and makes provision in detail for the organization and government of such cities under the home rule provisions of the constitution. (Laws, 1890, p. 131, sec. 23 and p. 215, secs. 1-9.)

sec. 763-768. Upon petition of ¼ of the qualified electors, the city council is required to provide for the election of freeholders to propose changes in the charter. (Laws, 1895, c. 27.)

Laws, 1903, c. 186. On petition of 15% of the qualified voters of any municipality, having adopted a charter under the laws of the state, requesting the adoption of a specified charter amendment providing for any matter within the realm of local affairs or municipal business, the amendment must be submitted to the voters and if approved by a majority of the electors voting upon the proposition the amendment is to become a part of the charter law.

This provision is not to be construed as depriving city councils from submitting proposed charter amendments to the voters as now provided but is to be held as affording a concurrent and additional method for proposing and submitting amendments.

Under Acts, 1903, c. 186, requiring submission to the voters of an amendment of a city charter on petition of a certain proportion of the qualified voters of the city it lies with the city council in the first instance to pass on the question of the qualification of the signers. Hindman v. Boyd, 1906, 84 Pac. (Wash.) 609.

PROCEDURE IN CHARTER-MAKING

The procedure required by the different constitutional provisions in the drafting of home rule charters is very similar in the different states.

Initiation of charter-making

The power to initiate proceedings for framing a charter is most generally placed with the law-making authorities of the municipality but this is not uniformly the rule. In Minnesota the district court is authorized to take the initiative. Quite generally provision is made for initiating proceedings upon petition of a specified percentage of the qualified electors.

Initiative by district court. The Minnesota provision is the only one which authorizes the judiciary to take the initiative in the framing of freeholders' charters.

See Minn. Const. art. 4, sec. 36.

Initiative by law making authority. In a number of the states the legislative authority of the city may call an election for a charter board at its discretion.

See Cal. Const. art. 11, sec. 8; Mo. Const. art. 9, sec. 16; Okla. Const. art. 18, sec. (3) and Wash. Const. art. 11, sec. 10.

Initiative by electors. In certain states an election for a charter convention must be called upon petition of a specified percentage of the qualified voters. In Colorado the number of signatures required is 5% and in Oklahoma and on each 25%.

See Col. Const. art. (b) and Wash. Laws

In Minnesota the commission must of the legal voter

cla. Const. art. 18, sec. 3

freeholders in charter I upon petition of 5%

Selection of cha

Election by people, and m is generally made for the election of the charter board by the qualified electers of the municipality.

Compare the provisions of Cal. Const. art. 11, sec. 8; Co-Const. art. 20, sec. 5; Mo. Const. art. 9, sec. 10, and sec. 20 Okla Const. art. 8, sec. 3 arr and Wash. Const. art. 11, sec. 10.

Appointment by judiciary. Minnesota is an exception to the general rule and provides that the board be appointed by the district court of the judicial district in which the city or village is situated.

See Mann Const., art 4, sec. 36

Constitution of board

Number of members. The charter board is composed of 13 members in Missouri, 15 members each in California, Minnesota and Washington, and 21 members in Colorado. Oklahoma provides for the election of 2 freeholders from each ward of the municipality.

MUNICIPAL HOME RULE CHARTERS

Tenure of office. In all of the states except Minnesota the term of office expires after the charter has been framed. In Minnesota the board is permanent but the term of office is limited to 4 years.

See Minn Const. art. 4, sec. 36 and Laws, 1899, c. 351.

Ratification of charter

The proposed charter must be submitted to a referendum vote of the qualified electors in each of the states.

Ratification by electors. In Colorado and in Washington a majority of the qualified electors voting on the proposition for the charter is sufficient for ratification. In Missouri and in Minnesota a majority of 4/7 of the electors voting at the election is necessary and Minnesota requires a majority of 3/4 for changing patrol limits.

Legislative veto. California requires a majority of the qualified electors "voting thereon" and a subsequent submission of the charter to the legislature for its approval or rejection as a whole without power of alteration or amendment.

Approval of governor. Oklahoma provides that a charter ratified by the people must be submitted to the governor of the state and he is required to approve the same if it is not in conflict with the laws of the state.

Charter amendments

In most of the states the procedure for securing a charter amendment is similar to the method of secur-

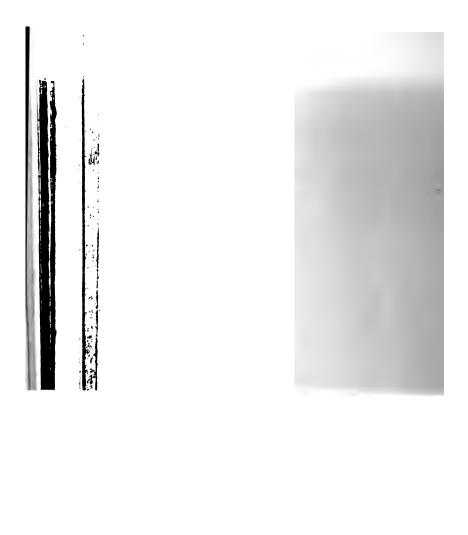
tive through pet case of amenda amendments is re qualified voters 1 Minnesota and 25 vides 2 alternative tion of 25% of t. must provide for pose changes in t voters request the amendment it must be

ing a complete charter but a wider use of the initiagenerally authorized in the he submission of charter oon petition of 15% of the rnia, 5% in Colorado and dahoma. Washington profor amendments: upon petied electors the city council tion of freeholders to proor if 15% of the qualified sion of a specified charter mitted.

Compare the provisions of Cal. Const. art. 11, sec. 8; Col. Const. art. 20, sec. 5; Minn. Const. art. 4, sec. 36; Okla. Const. art. 4, sec. 36; Okla. Const. art. 18, sec. 3 b); Wash. Laws. 1895, c. 27 and Laws. 1900 c. 180

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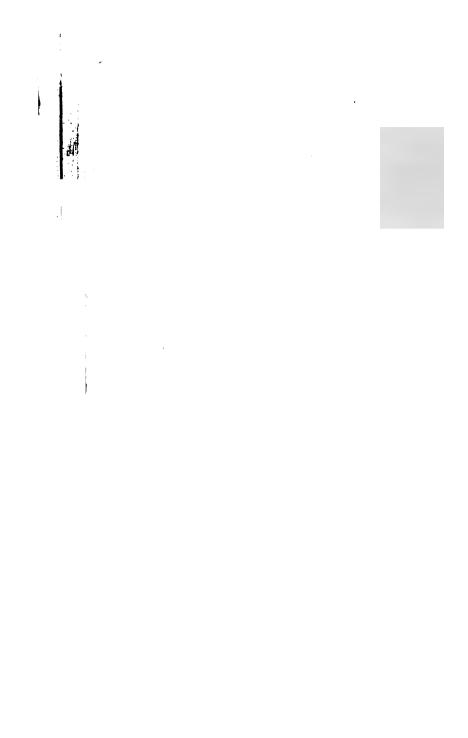








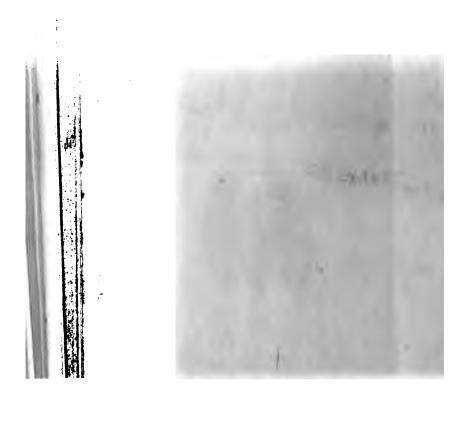
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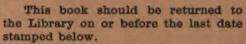




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A fine of five cents a day is incurred by retaining it beyond the specified time.

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